Big Tech Payment Platforms
Comments of USPIRG and the Center for Digital Democracy
CFPB Docket No.-2021-0017

December 21, 2021

The US Public Interest Research Group (USPIRG)[1] and the Center for Digital Democracy (CDD)[2] respectfully submit these comments in connection with the Bureau's October 21, 2021 request to six leading technology companies, as well as its call for comments. The Bureau has chosen the six Big Tech companies for Section 1022 information requests wisely, as they are key leaders shaping the "embedded finance" system promoted by the platforms and key digital payment service providers.

We also commend the Bureau for its announcement last week of a related Section 1022 inquiry into five "Buy Now, Pay Later" (BNPL) firms, including Afterpay, which is in the process of being acquired by Square (apparently now renamed Block[3]), one of the subjects of this market-monitoring inquiry into Big Tech and payments.[4] Big Tech's entry into the payments space must be seen as just one of its attempts to take over the broader finance system, which poses existential threats to the financial system, including to the longtime separation of banking and commerce.

USPIRG and CDD believe the U.S. is at an especially critical inflection point regarding digital platforms, digital payment services and online consumer protection: the pervasive tracking of data on individuals, families and groups, online and off; the nearly real-time ability to target a consumer with financial and other product offers regardless of where they are or device they use; and the development of a highly sophisticated and now machine-driven apparatus to deliver personalized marketing and communications, have all led to a largely unaccountable digital marketplace. A handful of digital platform giants and their partners stealthily operate what is known as a "surveillance marketing" system, which now pervades every aspect of our lives—increasingly affecting how the public engages with the financial services sector.

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[1] U.S. PIRG (https://uspirg.org) is an advocate for the public interest. We speak out for a healthier, safer world in which we're freer to pursue our own individual well-being and the common good. As an organizational priority, U.S. PIRG seeks to protect consumers in the financial marketplace and digital world.

[2] The mission of the Center for Digital Democracy (https://www.democraticmedia.org) is to ensure that digital technologies serve and strengthen democratic values, institutions and processes. CDD strives to safeguard privacy and civil and human rights, as well as to advance equity, fairness, and community.

[3] Although note that Square has been sued by H.R. Block over its renaming, see Clint Rainey, "Jack Dorsey's Block Sued by H&R Block in a Challenge to Big Tech's Seizure of Everyday Words," Fast Company, 16 Dec. 2021, https://www.fastcompany.com/90706886/hr-block-sues-jack-dorsey-square-rebrand.

[4] CFPB News Release, "Consumer Financial Protection Bureau Opens Inquiry into 'Buy Now, Pay Later' Credit," 16 Dec. 2021, https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/.

As the Bureau's Request for Comment illustrates, it is aware of the serious ramifications to consumers and small businesses as the U.S. accelerates its transition to what Google calls "embedded finance." The leading platforms and online services, as they accelerate their roles as America's new bankers and lenders, bring with them a host of critical issues that the Bureau must address. Moreover, the industry's "closed-loop" business model, where platforms and online data and ad practices are able to operate in a non-transparent manner, which has already caused an uproar from global marketers, is poised to have even greater consequences as it assumes greater control over our daily financial experiences.[5]

The Bureau has also indicated an interest "in studying the payment system practices of Chinese tech giants, including Alipay and WeChat Pay."[6] This Examination should trigger rules for foreign digital payment services doing business in the U.S., and also help identify looming consumer threats and challenges. China's experience with digital payment services is fundamental for better understanding and responding to the dramatic transformation of the financial system due to digital technology and major platforms and holding companies.[7] Alipay is used by Chinese citizens when they make purchases when traveling in the U.S., including its use at such chains as "CVS, Walgreens, Sephora, Target, Hilton, Hyatt, Marriott International" as well as :online stores through Shopify's platform…."[8] Alipay's use of AI and other new technologies, as well as its data-analytic process, illustrates contemporary Big Data applications that have reshaped the consumer and commercial landscape.[9] We urge the Bureau to specifically

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[5] See, for example, ID Comms, "ID Comms 7Ts® Global Transparency Report," Dec. 2021, https://s3.amazonaws.com/media.mediapost.com/uploads/ID_Comms_7Ts_MediaTransparency_2021_report.pdf; Barry Levine, "ANA Calls for Independent Audits of Ads in the 'Walled Gardens,'" MarTech, 17 Mar. 2017, https://martech.org/ana-calls-independent-audits-ads-walled-gardens/.

[6] We note that a Trump administration report asserted that "While access to payment clearing and settlement services is generally limited to depositary institutions in the United States, some countries have provided mechanisms that allow nonbanks to access those services.… In China, authorities have allowed nonbank fintechs to access payment systems to clear and settle retail payment transactions. Large nonbank firms, like Ant Financial (AliPay) and Tencent (WeChat) have established dominant positions in the Chinese mobile payments market, with 54.3% and 38.2% shares of the market, respectively, in 2017." U.S. Department of the Treasury, "A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation: A Report To President Trump," U.S. Treasury Dept., July 2018, p. 180, https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation_0.pdf.

[7] Jaime Toplin, "China Mobile Payments Forecast 2021: Government Crackdowns and Innovation Could Disrupt a Mature, Duopolized Market," eMarketer, 29 Oct. 2021, https://content-na1.emarketer.com/china-mobile-payments-forecast-2021.

[8] Kate Silver, "How Alipay Connects US Businesses with Chinese Consumers," Protocol, https://www.protocol.com/sponsored-content/the-new-wave-of-global-trade-how-alipay-connects-us-businesses-with-chinese-consumers?rebelltitem=2#rebelltitem2.

[9] Ant Group, "Technological Innovation," https://www.antgroup.com/en/technology; Alipay, "Alipay for Business: North America, Connecting North American Businesses with Asian Markets," 22 Apr. 2021, https://www.youtube.com/watch?v=ij5bU4qw5Ds&t=33s.

review how these leading Chinese-based payment services are used to foster digital marketing of financial products.[10]

We see numerous platform and other online practices posing threats to fairness, privacy, equity, justice, and consumer rights in the financial services marketplace. The online environment is now our public square, workplace, recreational destination and where we reside. The amount of time Americans spend online illustrates how this system is so intertwined in our lives—eight hours a day. This includes time spent on mobile, social media, video streaming, digital audio and desktop computing.[11] According to one report, "ninety-five percent of U.S. adults [now] own a device with which they could make a transaction," facilitated via a "slew of high-profile partnerships [enabling] payments on these devices."[12] In fact, the majority of Americans—some 77 percent—use digital payment applications, including in-app transactions, peer-to-peer money transfers, and in-store mobile payments.[13] Mobile devices now serve as contactless terminals for payment processing as well.[14] The digital system will only grow in power and influence, becoming the essential link for consumers and businesses to engage with all manner of financial services. We believe the Bureau should especially analyze how the confluence of platforms and digital payment services could further exacerbate the fragile financial state of Americans now struggling—or who faced historic discriminatory treatment—in our economy.

The coronavirus pandemic has accelerated the broader adoption and evolution of digital payment services in the U.S., as well as spurred other consumer behaviors connected to online financial transactions. As McKinsey notes in its 2020 report on digital payments, the pandemic "crisis is compressing a half-decade's worth of change into less than one year—and in areas that are typically slow to evolve: customer behavior, economic models and payments operating

[10] See, for example, Eggsist, "Alipay Drive to Commerce & Drive to Store Super APP," https://www.eggsist.com/en/what/alipay-marketing-solutions-strategy/?cn-reloaded=1; "Advertising on WeChat: Cost, Ad Formats, Targeting, Rules & Regulations," WeChat Wiki, https://wechatwiki.com/wechat-resources/wechat-advertising-media-buying-guide/.

[11] Audrey Schomer, "US Time Spent with Media 2021: Digital Media Usage Gains After the 2020 Pandemic Year, but Traditional Formats Fade," eMarketer, 27 May 2021, https://content-na1.emarketer.com/us-time-spent-with-media-2021.

[12] Jaime Toplin, "The Payments Ecosystem," eMarketer, 15 Jan. 2021, https://content-na1.emarketer.com/payments-ecosystem.

[13] Stephen Whiteside, "Understanding the Four User Groups for Digital Payments," WARC Event Reports, Money 20/20, Oct. 2019, https://www.warc.com/content/article/event-reports/understanding-the-four-user-groups-for-digital-payments/130627. There is also "grab and go" commerce, such as via Amazon Go. See, for example, Amazon Go. https://www.amazon.com/b?ie=UTF8&node=16008589011.

[14] Mark Gurman, "Apple Buys Startup to Turn iPhones Into Payment Terminals," Bloomberg, 31 July 2020, https://finance.yahoo.com/news/apple-buys-startup-turn-iphones-002443381.html; Mastercard, "Tap on Phone," https://www.mastercard.com/global/en/business/overview/start-accepting/tap-on-phone.html.

models."[15] The pandemic has helped make the further evolution to online buying and ecommerce activities, including for consumer products, a routine part of our daily experience. The shift to online transactions fostered by the response to the pandemic is also contributing to a key transition phase in the financial services sector.[16] Consumers are more open to changing the relationships they may have with legacy institutions and adopt alternative or emerging approaches.[17]

The growing role of platforms to leverage their market positions to shape the digital payment system is now disintermediating "banks and credit card companies from consumers." These platforms are poised to dominate consumer and small business financial markets as much as they now do ecommerce, entertainment, and communications.[18] In the process, these platforms and their online financial and other service partners will pose a series of threats. Their operating model, as we discuss below, engages in far-reaching forms of consumer manipulation, relying on a host of online marketing tactics designed to trigger a range of responses.[19] There is a very real risk that without Bureau action, the digital payments and platform complex will aggressively push Americans to new levels of debt, as the Big Data and artificial intelligence (AI) apparatus now at the core of the consumer digital economy encourages impulse buying and other potentially consequential practices. These entities have so much information on individuals, communities and commerce, they easily dislodge smaller and locally-based businesses. Since data analyzed by the platforms is used to identify commercial opportunities across the range of their product offerings—which is basically making everything available for sale—a consumer will not be aware, let alone control, how this information can be used to target them with other products and services. As Alphabet/Google highlighted in a recent report on "embedded finance," "online finance" has altered what people think is banking and managing finances: "now, most financial transactions happen via mobile apps, websites, email, text messages and other digital communications." Google's "white paper" suggests that embedded finance may be "the new gold rush" for financial services. Among the competitive benefits claimed by Google are that embedded finance "enables business to reach new customers at the moment when they

[15] McKinsey & Company, "The 2021 McKinsey Global Payments Report," https://www.mckinsey.com/industries/financial-services/our-insights/the-2021-mckinsey-global-payments-report.

[16] Note that the pandemic has intensified this shift, but it has been occurring for years. See pp. 18-19 ("The Concept of the Transaction Itself Is Changing"), below.

[17] "What We Know About Digital Payments," WARC Best Practice, Dec. 2020, https://www.warc.com/content/article/bestprac/what-we-know-about-digital-payments/129734

[18] "Future of Payments: Admap Summary Deck." Admap Magazine, Aug. 2019, https://www.warc.com/content/article/future-of-payments-admap-summary-deck/127622.

[19] See, for example, the use of so-called "neuromarketing" by Meta/Facebook and others to identify subconscious and emotional responses to online media. Facebook, "How Ad Delivery on Multiple Channels Affects Brain and Behavior," Meta for Business, 10 Dec. 2015, https://www.facebook.com/business/news/facebook-iq-multi-channel-ad-study; Nielsen, "Demand Fuels Nielsen Consumer Neuroscience Expansion," 20 Apr. 2018, https://www.nielsen.com/us/en/news-center/2018/demand-fuels-nielsen-consumer-neuroscience-expansion/.

need your services." There is also an added "bonus": "the data you collect from each transaction…."[20]

According to a recent report from McKinsey, the success Google and other tech giants have had dominating the marketplace should serve also as a model for banks. These institutions should "future proof their business models…by making products that are embedded in their users' daily lives," such as "drawing customers into their broader ecosystems and creating personalized insights."[21]

Online data brokers and financial data profiling of consumers. The largest data brokers have significantly expanded into the digital marketing arena, especially through multiple acquisitions of competitors or data-focused services companies. Experian, TransUnion, Acxiom, Equifax and Epsilon, for example, each offer a host of surveillance-marketing-related tools that can be used to target consumers for loans, credit and other products. This system largely operates in a stealth manner, and we urge the Bureau to investigate how the major data brokers play a role in the digital payment system, including by the platforms.[22] For example, Acxiom explains that its "consumer recognition, data management, omnichannel marketing and analytic services" enable customers to "lend in real-time."[23] TransUnion has aggressively expanded its marketing footprint to now include the millions of Americans who view streaming video, enabling various forms of financial profiling, targeting and transactions.[24] Epsilon's financial services online marketing division notes its capabilities to find and retain customers, as well as to support the "cross-sell" of related products by using data that "anticipates the needs of each customer in real-time…."[25] These data brokers have relationships with the key platforms, including through their various cloud and data-processing operations.[26]

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[20] Google, "Embedded Finance: The Key to Survival and Growth for Financial Institutions," Google Cloud, https://cloud.google.com/resources/financial-services-embedded-finance-whitepaper

[21] Paul Rohan and Thurain Tun, "Why Embedding Financial Services into Digital Experiences Can Generate New Revenue," Google Cloud, 14 May 2021, https://cloud.google.com/blog/topics/financial-services/embedded-finance-and-apis-can-help-modernize-banks; Tom Auchterlonie, "Banks That Want to Avoid Becoming Laggards Have a Brief Post-recovery Window to Exploit, McKinsey Says," Business Insider, 7 Dec. 2021, https://www.businessinsider.com/mckinsey-warns-that-banks-have-a-short-post-recovery-window-2021-12.

[22] See, for example, Experian, "Powering Innovative Fintech Lending Solutions with Accurate and Reliable Data," https://www.experian.com/fintech/marketplace-lending; Experian, "Connecting Consumers and Marketplace Lenders," https://www.experian.com/fintech/online-consumer-lending.

[23] Acxiom, "Financial Services Marketing," https://www.acxiom.com/financial-services-marketing/.

[24] TransUnion, "TruAudience Data Marketplace," https://www.truaudience.com/data-marketplace#Features.

[25] Epsilon, "Financial Services: Anticipate People's Next Financial Need," https://www.epsilon.com/us/industries/financial-services.

[26] See, for example, Epsilon, "Connect to Google's Cloud via Partner Interconnect," https://epsilontel.com/partner-ecosystem/google-cloud/; Amazon, "Acxiom," AWS Marketplace, https://aws.amazon.com/marketplace/seller-profile?id=dbf3ff8e-416c-41a0-9f44-1fbeb8c160a4.

Platforms' and digital finance's role in the financial crisis 2007-2008 should also serve as warning: Through the use of online "lead-generation" tactics operating without constraint, consumers were lured into high-interest mortgages and other loans.[27] Data on individuals flowed in and out of platforms and online services without any limit, oversight, or regulatory safeguard. A great deal of this online lead-generation practice still thrives, on platforms and other leading digital services. The Bureau should investigate as part of this proceeding the ways online "lead-gen" is used to develop the targeting and sales of financial products to consumers.[28]

Critical Areas of Concern

As the Bureau knows, in order to effectively protect the public, including consumers and small businesses, it must "unpack" the structural components of today's commercial digital system in the U.S. Decades of the failure to regulate and effectively oversee the online industry, especially the most powerful entities, have unleashed a concentrated, unfettered data-driven, and behaviorally impactful marketplace. Dominated by a few leading entities, the online data and digital marketing industry operates as an exclusive club for insiders, who among themselves make nearly all the decisions on how the internet and other online applications interact with Americans and the rest of the world.[29]

We urge the Bureau to assess in this inquiry the following issues: the growing proliferation and integration of payment services within multiple platform and digital device and application functions, involving marketing, advertising, and e-commerce; the capture and unfettered use of multiple sources of financial and other key data used for profiling individuals and groups of consumers (including information reflecting a person's race, ethnicity and income status); the Big Data technologies and techniques deployed for online financial services-connected applications (such as consumer data management platforms and AI-based software); and the operating partnerships among leading platforms—including Amazon, Google and Facebook—with multiple major banks, other financial services providers, and data servicing and marketing companies.

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[27] Ed Mierzwinski and Jeff Chester, "Selling Consumers Not Lists: The New World of Digital Decision-Making and the Role of the Fair Credit Reporting Act," *Suffolk University Law Review* 46, no. 3 (2013): 845-880, https://cpb-us-e1.wpmucdn.com/sites.suffolk.edu/dist/3/1172/files/2014/01/Mierzwinksi-Chester_Lead.pdf.

[28] See, for example, Facebook, "Lead Ads: Generate New Leads by Providing Value for People," Meta for Business, https://www.facebook.com/business/ads/lead-ads; Google, "How to Generate High-quality Leads with Digital Ads," Think with Google, July 2021, https://www.thinkwithgoogle.com/consumer-insights/consumer-journey/advertising-lead-generation-guide/?utm_medium=cpc&utm_source=paid-media&utm_team=twg-us&utm_campaign=twg-cpc-us-2021q3-ASC-lead-generation-guide&gclid=Cj0KCQiA8ICOBhDmARIsAEGI6o1xp2DaJc4SKgMdtjmAJr4z8MIXd2TxEmeoA6fIxCCCUHsQR_PnGqcaAhl1EALw_wcB&gclsrc=aw.ds.

[29] See, for example, the role of private trade associations in developing standards and applications: IAB, "IAB Tech Lab Council," https://iabtechlab.com/working-groups/. See also how platform-based divisions determine how the larger public is treated online: "Shape the Future of Marketing with the Marketing Science Team," Facebook Careers, https://www.facebookcareers.com/life/come-build-with-the-facebook-marketing-science-team/.

Another critical concern is the growing consolidation and acquisition spree by digital payment and platform companies, which is steadily enabling fewer, and more powerful, entities to play a dominant role in this critical financial system. This consolidation of control in the digital payments sphere is built upon the largely unfettered mergers and acquisitions that have dominated the U.S. digital media industry for years. These developments require an urgent response by the Bureau, given that a handful of platform and consumer device and application companies dominate much of the mobile operating system and app store environments (and thereby play a leading role in data-driven advertising and e-commerce). It should not come as a surprise that, as the World Advertising Research Center noted in 2020, digital payment applications are increasingly developed as "super apps, which bundle logistics, commerce, payments and social [media with] mobile payment platforms."[30] The integration and bundling of services in order to dominate multiple markets is exactly what the leading platforms do, with financial payments and related applications at the core of their data-driven surveillance apparatus. Adults in the U.S. spend 4 hours and 30 minutes daily on "nonvoice activities" with their phones and tablets—primarily via apps. Platform and digital payment companies are using this powerful channel to further expand their financial services offerings, taking advantage of being positioned to be the always-on bank, credit card and retailer wherever we are and whatever we do.[31]

Increasingly, U.S. (and global) consumers interact with a growing infrastructure of real-time payment applications, ranging from well-known digital marketing industry players to dozens of new entrants.[32] The companies selected for the bureau's inquiry are further expanding their foothold in the payments space—but are already at scale to disrupt it. One outcome is that the Big Tech firms' entry could force changes to legacy payment network practices; another could be that the Big Tech firms simply replace legacy bank and payments firms. The Big Tech firms have a corporate surveillance business model that has widely different goals than those of publicly chartered and regulated financial institutions; their model is antithetical to fair consumer treatment generally, but which is especially true when financial matters are at stake.[33] These dominant online enterprises and their partners continually expand their capabilities to gather and

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[30] "What We Know About Digital Payments."

[31] Yoram Wurmser, "Insider Intelligence's Mobile Trends to Watch in 2022: Apps Look Beyond Ads and Embrace Embedded Commerce, QR Codes, and Sustainability," eMarketer, 2 Dec. 2021, https://content-na1.emarketer.com/insider-intelligence-mobile-trends-watch-2022.

[32] See, for example, Stephen Nellis, "Adobe Taps Startup Bolt to Add One-click Checkouts to Commerce Sites," Reuters, 18 Nov. 2021, https://www.reuters.com/technology/adobe-taps-startup-bolt-add-one-click-checkouts-commerce-sites-2021-11-18/; Daniel Keyes, "The Rise of Real-Time Payments," eMarketer, 14 Apr. 2021, https://www.emarketer.com/content/rise-of-real-time-payments.

[33] Strategic Organizing Center, "SOC Complaint to the FTC Against Amazon, Inc. for Unlawful Deception Under Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45 (a)," 8 Dec. 2021, https://thesoc.org/what-we-do/soc-complaint-to-the-ftc-against-amazon-inc-for-unlawful-deception-under-section-5-of-the-federal-trade-commission-act-15-u-s-c-45-a/; Foo Yun Chee, "EXCLUSIVE: Amazon Seeking to Settle EU Antitrust Investigations, Sources Say," Reuters, 9 Nov. 2021, https://www.reuters.com/business/retail-consumer/exclusive-amazon-seeking-settle-eu-antitrust-investigations-sources-say-2021-11-09/.

leverage information collected and analyzed about consumers. The firms have also unleashed a myriad of methods developed to trigger forms of a key online industry metric called "engagement," which is operationalized in multiple ways but ultimately designed to influence a person's behaviors and attitudes, including at an emotional and subconscious level.[34] The primary operational mission is to direct a consumer to a process called the "path to purchase," which integrates a host of applications, such as content, communications, social relationships, data analytics and more to drive a purchase or other goal.[35] Most, if not all, of these online-platform-related practices are largely opaque in their operations, reflecting the rampant reliance on what are known as "dark patterns" to keep consumers and customers in the "dark" about terms, conditions and intent of the service.[36]

Additionally, there are robust mechanisms in place to measure how consumers react to the online marketing and informational services they receive (increasingly in real time), which are leveraged to engage in more precise advertising and targeting. For example, a company such as PayPal is able to draw "on insights from its 325 million global users" to understand granularly consumer attitudes and adjust its marketing accordingly.[37]

Need for foundational policies to ensure fair practices

The widespread adoption of mobile devices and apps by U.S. consumers has largely operated in a regulatory- and consumer-protection-free environment, including a stunning lack of privacy and data protection rights, or meaningful safeguards to ensure fair marketing practices. Most consumer data-gathering and -use practices, as well as platform operations (including programmatic or behavioral advertising operations) are conducted without any serious federal oversight. The financial services industry was the second-leading spender for digital advertising in 2020 (following the retail sector, which we will explain is also increasingly integrated into the platform and payments apparatus). An estimated $19.62 billion was spent last year, which includes nearly $14 billion for financial marketing via mobile channels. According to eMarketer, financial service digital ad spend made up 14.6 percent of the entire U.S. digital ad market.[38]

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[34] IAB Mobile Measurement Task Force, "Mobile Engagement: Framework and Definitions," Feb. 2014, https://airmedia.com.mx/en/download/iab/4_iab_Engagement-Digital-Simplified-Final.pdf.

[35] Co-author U.S. PIRG is also part of a growing network of organizations seeking to reduce wasteful spending in other ways, including to guarantee a right to repair purchased goods and to "buy less, give more" this holiday season. See, for example, U.S. PIRG, "Buy Less, Give More: Guide to a Different Type of Gift This Holiday," https://uspirg.org/feature/usp/buy-less-give-more and U.S. PIRG, "Right to Repair," https://uspirg.org/feature/usp/right-repair.

[36] "Dark patterns" are discussed below in connection with Amazon Prime, pp. 19-20.

[37] Karen Stocks, "If You're Using a Single Tool for Measurement, Think Again," Think with Google, Feb./ 2020, https://www.thinkwithgoogle.com/marketing-strategies/data-and-measurement/media-measurement-tools/; PayPal, "Marketing Solutions Overview," PayPal Developer, https://developer.paypal.com/docs/marketing-solutions/; "Shape the Future of Marketing with the Marketing Science Team," Facebook Careers, https://www.facebookcareers.com/life/come-build-with-the-facebook-marketing-science-team/.

[38] Blake Droesch, "US Financial Services Digital Ad Spending 2020," eMarketer, 19 Aug. 2020, https://content-na1.emarketer.com/us-financial-services-digital-ad-spending-2020; PWC and IAB, "Internet Advertising Revenue Report: Full-year 2020 Results," Apr. 2021,

Projections indicate that we are in the midst of a significant investment by marketers to expand their ecommerce and other online buying capabilities. By the end of 2023, notes one report, "advertisers investment in both e-commerce and social media will have almost trebled when compared to 2019, prior to" the emergence of Covid-19. These investments are designed to expand the role that social commerce and other major new forms of engaging in transactions will play in our lives. The leading platforms which will especially benefit from this increased ad spend include Google, Meta, Amazon and TikTok (Douyin).[39]

Platforms are reworking their structures to further foster a seamless merchandising and payment apparatus, through such key practices as "social commerce," conversational or voice commerce via peer-to-peer messaging apps and digital assistants such as Alexa and Google Home; "Discovery Commerce," "Livestream Commerce," and "Q Commerce" (on-demand delivery). Working with brands and other advertisers, platforms have added "touchpoints such as web chats, video chats, virtual reality shopping events, and video experiences" to promote an "omnipresent…convergent commerce" environment. For example, "social commerce via platforms such as WeChat, TikTok, Facebook and Instagram take multiple forms, creating impulse and unplanned 'one-click' purchases via 'buy now' buttons, creating new product discovery via the power of peers."[40] Facebook, Instagram, Pinterest, Snapchat and TikTok offer shoppable content, shoppable ads, in-app checkout, and partnerships with Shopify, as well as various platform-based "shops." Walmart and TikTok, for example, now have a partnership.[41] The ongoing redesign of platform operations to trigger sales is, according to some experts, collapsing the "shopper journey" to the point that it can become simply a "one-click see-and-buy decision."[42]

Increasingly, digital payment services are integrated into system functioning that incorporates artificial intelligence and so-called "emotional intelligence" to more precisely facilitate consumer

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https://s3.amazonaws.com/media.mediapost.com/uploads/InternetAdvertisingRevenueReportApril2021.pdf.

[39] James McDonald and Rob Clapp, "Global Ad Trends: 2022 – Where is the Money Going?" WARC Data, Dec. 2021, https://www.warc.com/content/article/warc-data/global-ad-trends-2022--where-is-the-money-going/en-gb/142088.

[40] Alison Chaltas, Norrelle Goldring and Jane Lattimore, "Beyond Omnichannel Retail to Convergent Commerce," WARC Exclusive, Dec. 2021, https://www.warc.com/content/article/warc-exclusive/beyond-omnichannel-retail-to-convergent-commerce/142300.

[41] William White, "Walmart Doubles Down on TikTok Shopping, Hosts All-New Live Stream Shopping Event," Walmart, 9 Mar.2021, https://corporate.walmart.com/newsroom/2021/03/09/walmart-doubles-down-on-tiktok-shopping-hosts-all-new-live-stream-shopping-event; Andrew Lipsman, "Social Commerce 2021: Media and Commerce Convergence Creates Growth Opportunity for Brands," eMarketer, 3 Feb. 2021, https://content-na1.emarketer.com/social-commerce-2021; "The WARC Guide to Shoppable Media," WARC Best Practice, Mar. 2021, https://www.warc.com/content/article/bestprac/the-warc-guide-to-shoppable-media/135742.

[42] Alison Chaltas and Norrelle Goldring, "Beyond Omnichannel Retail to Convergent Commerce," WARC Exclusive, Nov. 2021, https://www.warc.com/content/article/warc-exclusive/beyond-omnichannel-retail-to-convergent-commerce/en-gb/140308.

transactions.[43] The Bureau should analyze how Google, its YouTube subsidiary, Meta's Instagram and other holdings have developed their e-commerce functionality and digital payment operations, including the integration of multimedia "shoppable layers" and the role of "emotional intelligence" and machine-learning operations.[44] There is a significant expansion of AI and machine-learning tools deployed to drive more precise consumer behaviors. According to Google, "50% of exchanges, trading systems, and data providers are offering data products or services powered by AI/ML, and of those, 42% intend to offer AI-powered trade execution and trading analytics services in the next 12 months. Within commercial and investment banks, 55% said they are currently using AI/ML in the cloud, and while that was true for only 14% of overall buy-side respondents, 44% of large buy-side respondents are using it."[45]

We also urge the Bureau to include in its analysis how platforms and online payment services are embedded in the "Internet of Things," especially "wearables," "connected" automobiles, and "smart" TVs.[46] It should also assess the adoption of virtual reality (VR) formats, and the so-called "metaverse," which will incorporate an array of digital payment and online marketing practices that raise key concerns about fairness and protection.[47] Such developments should be

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[43] See, for example, Jamie Tolentino, "This is What Banking Will Look Like in 10 Years: From AI to Crypto to Sustainability," TNW, 14 Dec. 2021, https://thenextweb.com/news/what-banking-will-look-like-in-10-years.

[44] AiAdvertising, "Swarm," https://www.aiadvertising.com/swarm/.

[45] Philip Moyer, "New Research from Google Cloud Reveals Five Innovation Trends for Market Data," Google Cloud Blog, 22 Sept. 2021, https://cloud.google.com/blog/topics/financial-services/market-data-distribution--consumption-through-cloud--ai.

[46] See, for example, the PayPal/NBCUniversal deal: Josh Feldman, "Putting the Store in Stories: NBCUniversal Unveils One Platform Commerce," 9 Nov. 2020, https://together.nbcuni.com/news/the-future-of-commerce-at-nbcuniversal/.

[47] WhatsApp, "Shopping, Payments, and Customer Service on WhatsApp," WhatsAp Blog, 22 Oct. 2020, https://blog.whatsapp.com/shopping-payments-and-customer-service-on-whatsapp/?lang=en; Instagram, "Introducing: Instagram Shop and Facebook Pay," Meta fir Business, 16 July 2020, https://business.instagram.com/blog/announcing-instagram-shop-facebook-pay; Daniel Konstantinovic, "YouTube Tests Social Commerce Waters, TV Measurement," eMarketer, 21 Oct. 2021, https://content-na1.emarketer.com/youtube-tests-social-commerce-waters-tv-measurement; Yasmin Borain, "Marketing Trends For 2022: Technology, Artificial Intelligence and Internet of Things," WARC Exclusive, Nov. 2021, https://www.warc.com/content/article/warc-exclusive/marketing-trends-for-2022-technology-artificial-intelligence-and-internet-of-things/en-gb/141212. WARC explains that "Discovery commerce confounds traditional understanding of the purchase funnel, where audiences move gradually along the stages involving awareness, interest, consideration and evaluation, before eventually leading to purchase. Instead, it's all about impulse shopping by audiences online who, even if they are not specifically in 'task mode', are in a near constant state of browsing shoppable content." This means they can quickly go on to buy new products after discovering them – collapsing the stages of the traditional funnel into just a few taps and swipes on their phone." Ed Cox, "What Brands Need to Know About Shopping on TikTok and the Discovery Commerce Boom," WARC Best Practice, Oct. 2021, https://www.warc.com/content/article/bestprac/what-brands-need-to-know-about-shopping-on-tiktok-and-the-discovery-commerce-boom/139680; "Microsoft's Own Metaverse is Coming, and it Will Have PowerPoint," AdAge, 2 Nov. 2021, https://adage.com/article/digital-marketing-ad-tech-news/microsoft-entering-metaverse-alongside-facebook/2377541; "The Metaverse – How Brands are Boldly Embracing

viewed as logical responses to the well-understood-by-industry role of the online media. The principal purpose for the leading platforms, and the larger commercial digital infrastructure they are connected to, is to generate revenues from advertising, marketing and other sales. Google, Facebook, Instagram, Snapchat and Amazon, for example, design their environments to foster continuous sales and marketing opportunities for their advertisers and retailer clients. They design, test, deploy and measure each of their applications to ensure they move people through the marketing "funnel," such as integrating what are known as "touchpoints" that deepen the interest a consumer will have with the commercial content. Another key strategy has been to leverage tracking and an arsenal of powerful analytical tools, enabling financial-services companies to unleash sophisticated and highly personalized marketing campaigns. As WARC describes these campaigns,

> Discovery commerce confounds traditional understanding of the purchase funnel, where audiences move gradually along the stages involving awareness, interest, consideration and evaluation, before eventually leading to purchase. Instead, it's all about impulse shopping by audiences online who, even if they are not specifically in 'task mode', are in a near constant state of browsing shoppable content. This means they can quickly go on to buy new products after discovering them—collapsing the stages of the traditional funnel into just a few taps and swipes on their phone.[48]

The commenters have previously examined how the protections offered by the Fair Credit Reporting Act have been weakened as financial and marketing actors have established a parallel online pre-screening, marketing and decision-making system that scores and ranks consumers and operates in real-time but may exist outside of the narrow FCRA definition that applies only when the information is to be used in establishing a consumer's eligibility for credit, insurance or employment. As noted elsewhere in this comment, USPIRG and CDD have long called on regulators to address the role that the platforms and digital media play in U.S. financial services. As we explained in a 2012 paper,

> A new world has emerged for the marketing of financial products and services. The promotion and sale of credit cards, mortgages, investments, retirement funds, loans, and banking are increasingly taking place online. Financial-services companies are taking full advantage of multichannel opportunities to reach and drive consumer action wherever they are. From mobile phones, to social media, to online video; financial-services companies are deploying the latest digital tools to identify and retain customers, generate a variety of scores on them, sell products, and create new forms of loyalty and revenues…. Contemporary digital-marketing practices are blurring the boundary separating marketing credit from offering it to a consumer. Interactive marketing techniques employ powerful new ways to influence consumer decision-making. Financial-services and credit-card companies stealthily "shadow" individual consumers across cyberspace, watching every click they make and engaging in predictive modeling to help the firm more precisely segment and identify customers to target. The capabilities

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Marketing's New Frontier," The Trade Desk, 28 Oct. 2021, https://www.thetradedesk.com/us/news/the-metaverse-how-brands-are-boldly-embracing-marketings-new-frontier.

[48] Cox, "What Brands Need to Know About Shopping on TikTok and the Discovery Commerce Boom."

> of online tracking enable the creation of "rich audience profiles," based on an analysis of a user's on-site behavior, which can be combined with an abundance of outside information. This includes intent data captured online that enables marketers to identify whom they consider better qualified prospects, sending consumers advertising shaped by their unique profiles. Armed with a digital dossier of a consumer's interests, background, and behaviors and an arsenal of powerful analytical tools, financial-services companies can unleash sophisticated and highly personalized marketing campaigns.[49]

Our early warnings are one reason why commentators are pleased that the Bureau has taken up this issue. As the director noted in his remarks accompanying this inquiry, key outcomes will be to determine how the firms harvest, use, monetize and share consumer information: "But payments businesses are network businesses and can gain tremendous scale and market power, potentially posing new risks and undermining fair competition. Furthermore, knowing what we spend our money on is a valuable source of data on consumer behavior."[50]

Among the key issues that we call on the Bureau to investigate and address are the following:

The Integration of Digital Payment Services with Other Applications by the Leading Platforms

Pay apps, along with mobile wallets, can incorporate a range of spending and borrowing features, including savings accounts, "shopping hubs," discount coupons, and "expanded search capabilities." They are playing a much greater role in today's consumer purchasing environment, given the downward trend of point-of-sale use of cash. These apps and wallets, however, can be structured to promote additional consumer-facing "spending opportunities" and tie merchants in greater dependency of the service, such as Google's Pay app for India (whose features may be introduced in the U.S.).[51] Peer-to-Peer (P2P) providers, such as PayPal's Venmo and Square's

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[49] Mierzwinski and Chester, "Selling Consumers Not Lists."

[50] Rohit Chopra, "Statement of the Director Regarding the CFPB's Inquiry into Big Tech Payment Platforms," 21 Oct. 2021, https://files.consumerfinance.gov/f/documents/cfpb_section-1022_directors-statement_2021-10.pdf.

[51] Caesar Sengupta, "Powering the Digital Economy; Building a Helpful Google for Everyone in India," Google India Blog, 19 Sept. 2019, https://blog.google/intl/en-in/company-news/outreach-initiatives/powering-digital-economy-building/?utm_source=Triggermail&utm_medium=email&utm_campaign=Post+Blast+bii-payments-and-commerce:+Google+Pay+adds+features+to+court+Indian+merchants+%7C+Revolut%27s+SCA+solution+could+prompt+wallet+adoption+%7C+Apple+Card+adds+T-Mobile+rewards&utm_term=BII+List+PayCom+ALL; Grace Broadbent, "PayPal's Super App Dreams Come to Fruition, Setting It Up for Strong Cross-promotion Possibilities," eMarketer, 22 Sept. 2021, https://content-na1.emarketer.com/paypal-s-super-app-dreams-come-fruition-setting-up-strong-cross-promotion-possibilities?utm_source=Triggermail&utm_medium=email&utm_campaign=PayComm%20Briefing%2011222021%20-%20APPLE&utm_term=PayCom%20Briefing%20Apple%20Mail%20Clients; Manish Singh, "Google Pay to Add Hinglish Support in India, Enable Merchants to Create Digital Storefronts," TechCrunch, 17 Nov. 2021, https://techcrunch.com/2021/11/17/google-pay-to-add-hinglish-support-in-india-enable-merchants-to-create-digital-

Cash App, have incorporated a range of other financial transaction-related features, in order in part to "tie customers more tightly" to their operations. For example, Venmo offers a credit card "housed within" its app, and Square has enhanced its "stock trading functionality."[52]

Amazon, Apple, Facebook and Google have long been focused on the financial services and payments sector, reflecting their various hybrid network status as communications network, direct promoter and seller of goods and services, provider of search data, and key outlet for digital advertising and marketing.[53] The platforms each offer eponymous payment schemes: Amazon Pay, Apple Pay, Facebook Pay, and Google Pay.[54] Google, for example, has partnered with numerous banks and credit card companies, and counts payments network leader Visa among the entities involved with its Google Pay financial product. Nevertheless, scuffling is already occurring in the relationships between the tech payment platforms and the legacy payment networks, as Amazon, for example, threatens Visa over UK interchange fees.[55]

These pay services incorporate various loyalty schemes to drive transactions.[56] Facebook Pay enables "secure payments on Facebook, Instagram and Messenger," and can be used to "make purchases, send money or donate" on its various platforms. Meta/Facebook has also recently expanded its loan services to small businesses, advancing funds under invoice using a "fast track" procedure.[57]

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storefronts/?utm_source=Triggermail&utm_medium=email&utm_campaign=PayComm%20Briefing%2011222021%20-%20APPLE&utm_term=PayCom%20Briefing%20Apple%20Mail%20Clients.

[52] Toplin, "The Payments Ecosystem"; Venmo, "One Credit Card. More Ways to Venmo," https://venmo.com/about/creditcard/.

[53] See, for example, "Google-BCG Study Reveals Indian Digital Payments Industry to Grow to $500 billion by 2020, Contributing to 15% of GDP," 25 July 2016, https://www.bcg.com/en-in/press/25july2016-digital-payments-2020-making-500-billion-ecosystem-in-india; Ryan Browne, "Facebook-backed Diem Aims to Launch Digital Currency Pilot Later This Year." https://www.cnbc.com/2021/04/20/facebook-backed-diem-aims-to-launch-digital-currency-pilot-in-2021.html; Amazon, "Financial Services," https://aws.amazon.com/financial-services/.

[54] See, for example, Google, "Google Pay," https://pay.google.com/about/; Facebook, "Facebook Pay," https://pay.facebook.com/; Amazon, "Amazon Pay," https://pay.amazon.com/. Apple also has a wallet function, as does Google through its Pay service. Apple, "Wallet," https://www.apple.com/wallet/.

[55] Margot Patrick, "Amazon to Stop Accepting U.K.-Issued Visa Credit Cards," *Wall Street Journal*, 17 Nov. 2021, https://www.wsj.com/articles/amazon-to-stop-accepting-u-k-issued-visa-credit-cards-11637153600.

[56] Google, "United States and Outlying Territories: Supported Payment Methods," Google Pay Help, https://support.google.com/pay/answer/7351835?hl=en; Visa, "Confident Payments with Google Pay™ and Visa Cards," https://usa.visa.com/pay-with-visa/featured-technologies/google-pay-consumer.html; Google, "Google Pay for Passes," https://developers.google.com/pay/passes.

[57] Facebook, "Facebook Invoice Fast Track," Meta for Business, https://www.facebook.com/business/invoice-fast-track; Facebook, "Streamline Checkout on Your Site with Facebook Pay," Meta for Business, 14 July 2021, https://www.facebook.com/business/news/integrate-facebook-pay-directly-into-business-website?ref=search_new_0; Facebook, "Can I Use Facebook Pay on Instagram to Make Purchases in

The Consolidation of Platforms and Payment Services
Digital payment providers, including platforms, have made substantial M&A investments. For example, in 2019, PayPal acquired Honey for $4 billion, which provided it with a service that can be added on to internet browsers so consumers can generate discount coupons. PayPal has integrated Honey to help expand its PayPal market footprint. The role of Honey technology in PayPal illustrates how the payment services are integrating digital marketing strategies to drive the use of its payment functions. Honey provides PayPal with the ability to generate "couponing at scale," especially useful, it notes, during a time of pandemic-induced economic stress. A PayPal executive explained last year that "one of the main reasons why…people [are] going online [but] leave their items in a cart and do not fulfill them is because they don't think they have the right deal…. And what Honey does is…it makes sure that you, as a consumer, have…the confidence that you're getting the right price." Honey technology uses machine learning to identify consumers who can deliver greater "lifetime value" and make other segmentation targeting decisions, for example.[58]

Paypal's Venmo mobile payment app is now integrating Honey, as well as implementing such "neobank" features as "budgeting, savings and cryptocurrency." Consumers are said to soon "gain the ability to buy, hold and sell crypto inside the Venmo mobile app," along with other "investment alternatives." [59] In 2021, PayPal also acquired security infrastructure company Curv to integrate it into its "business unit focused on blockchain, crypto and digital currencies."[60]

Last August, Square announced plans to acquire "Buy Now, Pay Later" provider Afterpay to "deepen and reinforce the connections between our Cash App and Seller ecosystems…." As the announcement of the deal noted, the acquisition "will expand Cash App's growing product offering…and help customers discover new merchants when the Afterpay App is integrated into Cash App." In its presentation to investors, Square described the "rapidly growing opportunity" driven by BNPL, explaining that merchants are embracing "omnichannel" strategies and using

Online Stores?" Instagram Help Center, https://www.facebook.com/help/instagram/360841165784331/?helpref=related.

[58] Sarah Perez, "PayPal to Acquire Shopping and Rewards Platform Honey for $4B," TechCrunch, 20 Nov. 2019, https://techcrunch.com/2019/11/20/paypal-to-acquire-shopping-and-rewards-platform-honey-for-4-billion/; "Honey Expands Shopping Rewards with Introduction of Cash Back Through PayPal," 5 Oct. 2021, https://newsroom.paypal-corp.com/2021-10-05-Honey-Expands-Shopping-Rewards-with-Introduction-of-Cash-Back-Through-PayPal; "PayPal's Honey Begins Offering Cash Back," Pymnts, 5 Oct. 2021, https://www.pymnts.com/news/loyalty-and-rewards-news/2021/paypal-honey-begins; Louise Matsakis, "Why Did PayPal Pay $4 Billion for a Coupon Browser Extension?" *Wired*, 23 Nov. 2019, https://www.wired.com/story/paypal-honey-4-billion-dollars/; "Honey: Company Profile," SpringML, https://www.springml.com/customers/customer-story-honey-science-corporation/.

[59] Sarah Perez, "Venmo to Gain Crypto, Budgeting, Savings and Honey Integrations This Year," TechCrunch, 4 Feb. 2021, https://techcrunch.com/2021/02/04/venmo-to-gain-crypto-budgeting-bill-pay-and-honey-integrations-this-year/.

[60] "PayPal to Acquire Curv," 8 Mar. 2021, https://newsroom.paypal-corp.com/2021-03-08-PayPal-to-Acquire-Curv. For other recent PayPal acquisitions, see "Acquisitions by PayPal," Tracxn, 29 Oct. 2021, https://tracxn.com/d/acquisitions/acquisitionsbyPayPal.

BNPL to increase “basket size” and “customer acquisition,” among other results. It noted the role that BNPL can play as a “lead generator,” highlighting that the “Afterpay App drove one million leads per days across its merchant base” this year. Lead generation is driven by in-app “commerce discovery” applications, explained Square.[61]

Another form of consolidation is through the industry’s interlinked practice involving APIs. The role of “application programming interfaces” (APIs) to interconnect platforms and other payment processing entities with partners and affiliates is facilitating the process that Google calls “embedded finance.” For example, “APIs can connect a ride-sharing app to a customer’s credit card or bank account to collect payment and then divide those funds…. [U]sing APIs, finance can be everywhere.” Through cloud services operated by the largest platforms there is a growing range of processing activities for financial services. For example, PayPal is using the Google Cloud to operationalize key components of is payment platform. Google now operates a “Datashare” service via its cloud that “brings together the entire capital markets ecosystem—data publishers, and data consumers—to exchange market data securely and easily.” This includes access to its machine learning based insight generation service BigQuery.[62]

In summary: what are the consumer harms threatened by the entry into payments of these Big Tech firms?

Data is at the core of today’s digital economy, including the affordances of digital payments
As the Bureau noted in its discussion of behavioral advertising, a variety of complex data-profiling and -targeting applications is deeply embedded into today’s digitally driven economy. Financial services companies, leading brands, and platforms have made significant investments to deploy a robust internal and external infrastructure for personalized and programmatic digital marketing. Indeed, a vast warren of techniques, partnerships, and marketing automation technologies is continually at work to drive consumer behavior and financial transactions. Data profiling information is available through marketing clouds, data marketing platforms (DMPs), and other sources to continually identify and analyze customers and perspective clients. Through practices that create what is known as an “ID Graf,” companies stitch together a person’s

[61] “Square, Inc. Announces Plans to Acquire Afterpay, Strengthening and Enabling Further Integration Between its Seller and Cash App Ecosystems,” 1 Aug. 2021, https://squareup.com/us/en/press/square-announces-plans-to-acquire-afterpay; “Square & Afterpay: Square Adds Afterpay to Seller and Cash App, Connecting its Ecosystems,” Aug. 2021, https://s27.q4cdn.com/311240100/files/doc_financials/2021/q2/Square-Plans-to-Acquire-Afterpay-Transaction-Overview.pdf; other related recent mergers and buyouts include: Klarna, “Shopping Just Got Smooother: Klarna Acquires HERO,” 14 July 2021, https://www.klarna.com/us/blog/shopping-just-got-smooother-klarna-acquires-hero/; “Mastercard Taps Into Buy Now, Pay Later Market with Latest Offering,” Reuters, 28 Sept. 2021, https://www.reuters.com/business/finance/mastercard-launches-buy-now-pay-later-program-2021-09-28/.

[62] Google, “PayPal Leverages Google Cloud to Flawlessly Manage Surges in Financial Transactions,” Google Cloud, https://cloud.google.com/customers/paypal. See also Amazon, “Financial Services”; Christin Brown, “Introducing Datashare Solution for Financial Services for Licensed Market Data Discovery, Access and Analytics on Google Cloud,” Google Cloud Blog, 27 May 2021, https://cloud.google.com/blog/topics/financial-services/announcing-the-general-availability-of-datashare.

identity, including their use of distinct devices such as mobile phones and streaming video services. The Oracle Data Cloud, for example, offers "one-stop shopping" for an array of informational resources related to a person's financial status, locational behavior, purchasing patterns, and the like from such sources as Experian, Equifax, Transunion, Place IQ and dozens of others.[63] Transunion and other leading traditional data brokers have expanded their data profiling operations, acquiring competitors and others in order to position themselves as robust digital marketing and targeting entities.[64] A set of services is at work to continually assess a customer's "Lifetime Value," developed by platforms and others, providing scores that can be acquired by marketers for profiling and targeting.[65]

The data processing capabilities of the platforms, major payment services, as well as leading brands have significantly evolved in the last few years, as machine learning, customer data platforms and new forms of identity management have been widely adopted. These developments have a direct impact on the ability of the leading companies to further monetize and expand their financial services operations, and thus should be assessed by the Bureau.[66]

In the recent past, a person's bank might have known something about that customer. But in the new platform-led digital financial system, a single entity is able not only to know so much more about a person—literally where they go, who they communicate with, how they earn their money and how they spend it. They know how to influence an individual to behave in a certain way, including methods to "reward" or "nudge" someone. Critically, through data analytics, they can "predict" how someone might act and then assemble the correct online content to help fulfill that prophecy. A great deal of this is done in near or at real time.[67] In addition, omnichannel

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[63] Oracle, "Branded Data Providers," https://www.oracle.com/cx/advertising/data-providers/; Oracle, "Oracle BlueKai Data Management Platform," https://www.oracle.com/cx/marketing/data-management-platform/.

[64] See, for example, "TransUnion Accelerates Growth of Identity-Based Solutions with Agreement to Acquire Neustar for $3.1 Billion," 13 Sept. 2021, https://newsroom.transunion.com/transunion-accelerates-growth-of-identity-based-solutions--with-agreement-to-acquire-neustar-for-31-billion/; "Experian Acquires Tapad, a Leading Digital Identity Resolution Provider," 19 Nov. 2020, https://www.experianplc.com/media/latest-news/2020/experian-acquires-tapad/; "Equifax Completes Acquisition of Teletrack® from CoreLogic®," 7 Sept. 2021, https://investor.equifax.com/news-events/press-releases/detail/1187/equifax-completes-acquisition-of-teletrack-from.

[65] See, for example, Clint Fontanella, "How to Calculate Customer Lifetime Value," HubSpot, 25 Aug. 2021, https://blog.hubspot.com/service/how-to-calculate-customer-lifetime-value; Facebook, "About Customer Lifetime Value," Meta Business Help Center, https://www.facebook.com/business/help/1730784113851988; Arity, Audience Network," https://www.arity.com/liveramp/.

[66] "Customer Data Platforms Reviews and Ratings," Gartner Peer Insights," https://www.gartner.com/reviews/market/customer-data-platforms; Mike Juang, "Bank of America Taps Epsilon for Ad Targeting in Post-Cookie World," *AdAge*, 23 July 2021, https://adage.com/article/digital-marketing-ad-tech-news/bank-america-taps-epsilon-ad-targeting-post-cookie-world/2352366.

[67] Rodrigo Asensio, "Serving Billions of Ads in Just 100 ms Using Amazon Elasticache for Redis," AWS Architecture Blog, 21 Apr. 2020, https://aws.amazon.com/blogs/architecture/serving-billions-of-ads-with-amazon-elasticache-for-redis/.

marketing means that consumers won't easily be able to avoid financial services marketing, since they can readily be tracked and targeted on their various devices. Leading online companies greatly benefit from a system they have developed to create a single "identifier" for a consumer, enabling them to take advantage of a person's use of different online devices (such as creating a single identifier that links a person's use of mobile phone, streaming video controller, or PC). Such cross-device data tracking effectively enables omnichannel commerce to surround a consumer.[68]

Emerging digital payment applications, such as Buy Now, Pay Later (BNPL) require Bureau scrutiny

As we noted in the introduction, we commend the Bureau for its announcement last week of a related Section 1022 inquiry into five "Buy Now, Pay Later" firms, including Afterpay, which is in the process of being acquired by Square (now renamed Block[69]), one of the subjects of this market-monitoring inquiry into Big Tech and payments.[70] As the Bureau's release noted:

> Indeed, BNPL's use has spiked during the COVID-19 pandemic and throughout the holiday shopping season. More and more Americans are using it, and the most recent Black Friday and Cyber Monday shopping weekend saw massive growth in BNPL.

American consumers are increasingly offered opportunities to purchase items immediately via intermediary lenders positioned in the growing BNPL market. It is estimated that more than 45 million people in the U.S. will use BNPL in 2020, with both legacy financial institutions and new entrants vying to provide credit as part of point-of-purchase transactions.[71]

Among the companies providing these services are Klarna, Afterpay (soon to be a unit of Square/Block), Sezzle, Viabill, and Affirm.[72] Installment or "instant" advanced payment for products may come at a cost for consumers, with some companies "charging more than typical credit card providers." The Bureau must also assess the impact of late fees (which are said to

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68 See, for example, LiveRamp, "Billions of Touch Points. One Omnichannel Ecosystem," https://liveramp.com/our-platform/omnichannel-ecosystem/.

69 As noted above, Square has been sued by H.R. Block over its renaming. Rainey, "Jack Dorsey's Block Sued by H&R Block in a Challenge to Big Tech's Seizure of Everyday Words."

70 CFPB News Release, "Consumer Financial Protection Bureau Opens Inquiry into "Buy Now, Pay Later" Credit," 16 December 2021, https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/.

71 Adriana Nunez, "Merchants Anticipate a Strong Holiday Season—But Faster and More Flexible Payments Will be Key," eMarketer, 23 Nov. 2021, https://www.emarketer.com/content/merchants-anticipate-strong-holiday-season-but-faster-flexible-payments-will-key; Jaime Toplin, "Mastercard Makes its BNPL Debut—And Could Shake Up the Industry at a Critical Inflection Point," eMarketer, 29 Sept, 2021, https://www.emarketer.com/content/mastercard-makes-its-bnpl-debut-and-could-shake-up-industry-critical-inflection-point.

72 Sara Lebow, "Klarna Holds On to Almost Half of US BNPL Users This Year, but Rivals Are On Its Tail," eMarketer, 15 July 2021, https://content-na1.emarketer.com/klarna-holds-on-almost-half-of-us-bnpl-users.

count for “a fifth of Afterpay’s revenue.”[73] According to one study, “almost 40% of those who use BNPL have missed more than one payment and saw their credit score affected.” More than half of shoppers who used BNPL couldn’t pay off their bill, according to another study. There is also growing evidence that the availability of platform-integrated and other BNPL services is promoting additional consumer debt.[74] As the Bureau is aware, in 2020, consumer debt in the U.S. reached a record high balance of $14.88 trillion.[75]

The Concept of the Transaction Itself Is Changing

While the pandemic intensified the switch to online shopping, as noted above, changes in the marketplace can be traced back to decisions made as long ago as the Gramm-Leach-Bliley Act (GLBA) of 1999. As one of the authors of this comment noted in 2010,

> The concept of the transaction itself is changing and that changes the balance between buyers and sellers. Many people have clicked on a "special offer" Weblink, and immediately clicked backward, only to find that the mere fact that they looked at a Web site for a millionth of a second constituted an agreement to buy. It can happen offline as well, when a bank gives your credit card number to a third-party marketer, who calls you on the phone and convinces you to accept a trial offer; a month later you found out you were being billed.[76]

As that article goes on to explain, law professor and former Minnesota Assistant Attorney General Prentiss Cox (2010) calls this “pre-acquired account telemarketing” or PAAT.[77] His

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[73] Klarna can charge up to 24.9 percent, for example. Klarna, “What is Monthly Financing and How Does it Work?” https://www.klarna.com/us/customer-service/what-is-financing-and-how-does-it-work/; Afterpay, “Installment Agreement – USA,” https://www.afterpay.com/en-US/installment-agreement; WARC, “What We Know about Digital Payments,” WARC Best Practice, Dec. 2020, https://www.warc.com/content/article/bestprac/what-we-know-about-digital-payments/129734.

[74] Anna Irrera, “As 'Buy Now, Pay Later' Surges, a Third of U.S. Users Fall Behind on Payments,” Reuters, 9 Sept. 2021, https://www.reuters.com/technology/buy-now-pay-later-surges-third-us-users-fall-behind-payments-2021-09-09/; Erin El Issa, “2021 Holiday Shopping Report,” NerdWallet, 2 Nov. 2021, https://www.nerdwallet.com/blog/2021-holiday-shopping-report/?utm_source=Triggermail&utm_medium=email&utm_campaign=eM%20briefing%20Nov%2030&utm_term=BII%20List%20DMedia%20ALL; Jessica Dickler, “More Than Half of Shoppers are Going into Debt This Holiday Season, Study Finds,” CNBC, 29 Nov. 2021, https://www.cnbc.com/2021/11/29/holiday-shopping-2021-more-than-half-of-americans-are-going-into-debt.html.

[75] Stefan Lembo Stolba, “Average U.S. Consumer Debt Reaches New Record in 2020,” Experian Blog, 6 Apr. 2021, https://www.experian.com/blogs/ask-experian/research/consumer-debt-study/.

[76] Edmund Mierzwinski, “Colston E. Warne Lecture: Consumer Protection 2.0—Protecting Consumers in the 21st Century,” *Journal of Consumer Affairs* 33, no 3 (Fall 2010), https://www.thefreelibrary.com/Colston+E.+Warne+lecture%3a+Consumer+Protection+2.0--protecting...-a0238177102.

[77] Prentiss Cox, “The Invisible Hand of Preacquired Account Marketing,” *Harvard Journal on Legislation* 47, no. 2 (2010, last revised 1 Feb, 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1460963.

work is informed by his office's state enforcement actions against data-sharing practices that helped lead to the Title V privacy provisions of the GLBA.

> Preacquired account marketing shifts the control of account charges from the consumer to the seller by circumventing short-hand methods used by consumers to signal assent to an account charge.

But Cox also notes that decisions made in the Gramm-Leach-Bliley Act to cross-reference the definition of "affiliate-sharing" to the Fair Credit Reporting Act, and subsequent interpretations by the Office of the Comptroller of the Currency, have allowed third-party telemarketers to access bank accounts with one-click, and have limited the GLBA's Title V privacy and consumer protection impact. As Cox explains further, the practices have resulted in innumerable post-GLBA state attorneys general and FTC enforcement actions against banks, online membership rewards clubs and other partners, including telecoms and other utilities.[78]

Amazon Prime cancelation procedures are an exemplar of "Dark Patterns" used by Big Tech

A perfect example of the changing nature of the transaction is the deceptive use of dark patterns by Big Tech firms. In January, the undersigned and several other organizations asked the Federal Trade Commission to investigate "dark patterns" used by Amazon Prime to make it harder to cancel membership.[79] The request was preceded by a report by colleagues at the Norwegian Consumer Council.[80] The use of dark patterns is widespread and under scrutiny by state legislatures and Congress. The FTC's recent Negative Option Enforcement statement links to numerous cases brought by the FTC and states.[81] Belatedly, companies are beginning to pay attention.[82]

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[78] Although a new law did not fully address sharp practices by regulated financial institutions, the sordid practices led to a partial solution with passage of the important "Restore Online Shoppers' Confidence Act," P.L. 111-345, championed by Senator John Rockefeller. See also hearings and staff reports of the Senate Commerce Committee, e.g., Office Of Oversight And Investigations Majority Staff Report for Chairman Rockefeller, "Aggressive Sales Tactics On The Internet And Their Impact On American Consumers," 16 Nov. 2009, https://www.commerce.senate.gov/services/files/c7b50606-8e74-4cbb-b608-87ab8b949d9a

[79] Public Citizen et al, Letter to FTC, 14 Jan. 2021, https://uspirg.org/sites/pirg/files/resources/Amazon-Dark-Patterns-FTC-letter-.pdf

[80] Norwegian Consumer Council You Can Log Out, But You Can Never Leave: How Amazon manipulates consumers to keep them subscribed to Amazon Prime, 14 Jan. 2021, https://fil.forbrukerradet.no/wp-content/uploads/2021/01/2021-01-14-you-can-log-out-but-you-can-never-leave-final.pdf.

[81] For example, see Footnote 6 in Federal Trade Commission, Enforcement Policy Statement Regarding Negative Option Marketing, 4 Nov. 2021, https://www.ftc.gov/policy/federal-register-notices/enforcement-policy-statement-regarding-negative-option-marketing.

[82] Katie Deighton, "Subscription Companies Rethink Irksome Cancelation Practices," *Wall Street Journal*, 1 Dec. 2021, https://www.wsj.com/articles/subscription-companies-rethink-irksome-cancelation-practices-11638370800.

Of course, while such dark patterns are used to make cancelations difficult and memberships sticky, the firms use the opposite tactics to promote the ease of purchasing: Amazon is an exemplar with its "one-click to buy" and its purchase "buy buttons." Virtually all e-tailers also use software to track and remind consumers about unfulfilled shopping carts. Big Tech tracking is ubiquitous.

Another problem: The entry into payments is not the only entry into finance by Big Tech
As Director Chopra recently noted about this inquiry, "Big Tech companies might leverage their existing online dominance to rapidly scale the use of digital payment networks, including cryptocurrencies.… As the Report on Stablecoins notes, established players with large user bases could accelerate the adoption of stablecoins as a payment device, and lead to an excessive concentration of market power."[83]

We concur, and associate ourselves with the remarks of Public Citizen in this docket,[84] which extensively explain Facebook's forays into cryptocurrency: Big Tech's aggressive entry into finance poses existential threats to the longtime separation of banking and commerce, which will lead to misallocations of credit and other harms. And while Wall Street has long flexed its financial power to gain and use political power, Big Tech is more than playing catch-up. Its political power is fueled by its data collection business model, as well as its vast coffers of cash. While it has vastly increased its lobbying and campaign donations,[85] it is also building up a massive political influence machine by donating to organizations that can help spread its views.[86]

How Do Big Tech Payments Entry and Other activities Increase Threats to the Longstanding Line between Banking and Commerce?
Already we are witnessing a disintermediation of the traditional banking system with their consumer and business-based customers. Just as the tech platforms eroded the market position of newspapers, broadcasting and cable, and retail outlets, they are doing so in the financial services sectors. We suggest to the Bureau that alarm bells should be ringing.[87] In addition to operating in a nontransparent and unaccountable manner, this is an industry whose problems make headlines daily. They can be manipulated by bad actors, are vulnerable to cyber-attacks and data breaches,

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[83] Rohit Chopra, "Statement of CFPB Director Chopra on Stablecoin Report," Consumer Financial Protection Bureau, 1 Nov. 2021, https://www.consumerfinance.gov/about-us/newsroom/statement-cfpb-director-chopra-stablecoin-report/.

[84] See https://www.regulations.gov/comment/CFPB-2021-0017-0071

[85] Jane Chung, "Big Tech, Big Cash: Washington's New Power Players," Public Citizen, 24 Mar. 2021, https://www.citizen.org/article/big-tech-lobbying-update/

[86] Nihal Krishan, "Big Tech Companies Ramp Up Spending on Political Influence Groups," *The Washington Examiner,* 11 Aug. 2021, https://www.washingtonexaminer.com/news/big-tech-companies-increase-swampy-donations-washington-policy-groups. See also Tech Transparency Project of the Campaign for Accountability, "Find Out Which Groups Get Big Tech Funding," 10 Aug. 2021, https://www.techtransparencyproject.org/articles/find-out-which-groups-get-big-tech-funding.

[87] Last week the *American Banker* noted that bells may also be "chiming" as the "nonbank" Chime has extended banking services to customers at more than 8,500 Walgreens locations. "Chime Users Can Now Make Deposits at Walgreen's for Free," *American Banker,* 15 Dec. 2021, https://www.americanbanker.com/articles/chime-users-can-now-make-deposits-at-walgreens-for-free

and have a complex problem addressing a major industry issue known as ad fraud.[88] Of course, the industry's hands-off approach to data privacy means that there are no real limits to how online surveillance of consumers is implemented. We know from recent Congressional hearings as well that monetization to bolster a platform's bottom line takes precedence even to acting on internal research about health threats to children. Secretive algorithms, discriminatory practices aimed at communities of color, and public health disinformation are just a few of the other well-publicized platform connected problems. The Bureau should enact regulations that help identify a reasonable path for the financial services sector to evolve in the digital era, one that includes a comprehensive set of policy safeguards to ensure fair consumer practices online.

The rapid expansion into financial services by the platforms and other online companies now involved in financial payments also underscores the need for effective, prudential and other supervisory and oversight requirements that regulated banks and their holding companies are now subjected to.

We urge the Bureau to implement President Biden's "Executive Order on Promoting Competition in the Digital Economy," including its focus for it to use Sections 1021 and 1033, to craft rules that address unfair, deceptive and abusive acts in consumer financial products and also ensure meaningful competition.[89] At the same time, we also respectfully urge the Bureau to consider endorsing a regime for protecting privacy that reflects the principles supported by the commentators and many leading consumer, privacy and civil rights organizations.[90] We also see merit for consideration of the bank association comments that urge the Bureau to include data aggregators in this inquiry and to consider a larger participant rulemaking for the data aggregator sector.[91]

Below are our responses to questions asked in the *Federal Register* notice:

1. **Will the operators engage in invasive financial surveillance and combine the data they collect on consumers with their geolocation and browsing data?**

Platform operators already engage in such invasive financial surveillance and integrate that data into their profiling and targeting systems. This has been a long-term problem that USPIRG and

[88] See, for example, efforts to address ad fraud: IAB Tech Lab, "Brand Safety & Ad Fraud," https://iabtechlab.com/brand-safety-ad-fraud/.

[89] The White House, "Executive Order on Promoting Competition in the American Economy," 9 July 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.

[90] "The Time is Now: A Framework For Comprehensive Privacy Protection and Digital Rights in the United States," Public Citizen, https://www.citizen.org/wp-content/uploads/migration/privacy-and-digital-rights-for-all-framework.pdf.

[91] Jonathan Berr, "Bankers Group Presses CFPB to Expand Tech Probe," Payments Dive, 20 Dec. 2021, https://www.paymentsdive.com/news/bankers-group-presses-cfpb-to-expand-tech-probe/611786/?utm_source=Sailthru&utm_medium=email&utm_campaign=Issue:%202021-12-20%20Payments%20Dive%20%5Bissue:38738%5D&utm_term=Payments%20Dive.

CDD have raised with regulators for many years.[92] One of the fundamental data building blocks for surveillance marketing is the availability of access to crucial financial information on consumers. Through data brokers, data marketing clouds, financial information companies and others, platforms and other online marketers can develop robust online dossiers on individuals. This information is often integrated with numerous other data points, including information on customer behaviors, sales, and location, through such automated systems as data management platforms. For example, providers of financially related data available through the "marketplace" run by Oracle include Acxiom, Alliant, Experian, IXI, and many others.[93] So-called real-time ad-targeting "exchanges" also incorporate financial data as a routine part of their consumer-tracking and -targeting apparatus.[94] Efforts to evade the FCRA and ECOA and other laws may also include the use of "look-alike audiences"[95] and the use of micro-neighborhood products.[96] Regulated financial firms have already questioned whether partnerships with Big Tech firms such as Facebook threaten their own compliance with fair lending laws.[97]

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[92] See, for example, U.S. PIRG Education Fund and Center for Digital Democracy, "Big Data: A Tool for Inclusion or Exclusion? Project No. P145406"; https://www.ftc.gov/system/files/documents/public_comments/2014/10/00061-92886.pdf; Jeff Chester, "U.S. Public Interest Group and Center for Digital Democracy Urge FTC to Protect Consumers from Unfair Lead Generation Practices in Comments Filed for Oct. Workshop," CDD Blog, 19 Sept. 2019; https://www.democraticmedia.org/blog/us-public-interest-group-and-center-digital-democracy-urge-ftc-protect-consumers-unfair-lead; U.S. PIRG, "We Urge CFPB to Provide Mobile Financial Protections," 10 Sept. 2014, https://uspirg.org/reports/usp/we-urge-cfpb-provide-mobile-financial-protections; "Comments by the U.S. Public Interest Research Group (USPIRG) and the Center for Digital Democracy (CDD) on 'Expanding Access to Credit through Online Marketplace Lending.' U.S. Department of the Treasury RFI. [FR Doc. 2015–17644 Billing code 4810–25–P4810-25-P Docket #RFI, TREAS-DO-2015- 0007-0001.] September 30, 2015," https://www.democraticmedia.org/sites/default/files/field/public/2015/uspirg_cdd_marketplacelendingrfi_final30sept2015.pdf.

[93] Oracle, "Branded Data Providers A–Z," https://www.oracle.com/cx/advertising/data-providers/#data-providers.

[94] See, for example, Xandr, "Monetize TV – PMP: Utilizing PMP Geo-Location Attribution," https://docs.xandr.com/bundle/tv-sell-side-pmp_tv-pmp-sell-standard/page/topics/geo-location-attribution-pmp.html. The Bureau should also review the financial services available on platform clouds, including the following: Google, "Find the Right Google Cloud Partner," https://cloud.withgoogle.com/partners?metadataExpertiseTypes=FINANCIAL_SERVICES_EXPERTISE&sort-type=RELEVANCE; Amazon, "Financial Services," AWS, https://aws.amazon.com/financial-services/.

[95] Note that Facebook maintains extensive "look-alike" resources. See, for example, Facebook, "About Lookalike Audiences," Meta for Business, https://www.facebook.com/business/help/164749007013531?id=401668390442328, but the practice is ubiquitous. See also Bryan Cave Leighton Paisner, "Is the Disclosure of Personal Information for Purposes of Creating a Look-alike Audience a "Sale" Under the CCPA?" 2 Jan. 2020, https://www.bclplaw.com/en-US/insights/is-the-disclosure-of-personal-information-for-purposes-of-creating-a-look-alike-audience-a-sale-under-the-ccpa.html.

[96] Mierzwinski and Chester, "Selling Consumers Not Lists," pp. 870-875.

[97] See "Facebook Ignores Pleas on Fair Lending Rules, Unnerving Financial Services Execs," *The Capitol Forum* 9, no. 439 (10 Dec. 2021), on file with authors. Excerpt: "Facebook parent Meta Platforms (FB) is

As the commentators have repeatedly told regulators, geolocation data has long been used as an integral part of the online marketing commercial surveillance model provided by Google, Facebook, other geolocation specialist companies.[98] The "location intelligence" system has literally "sliced and diced" the U.S. into highly segmented and well-identified places in order to gather ongoing consumer geolocation activities and also for real-time targeting activation via geo-fences and similar location-monitoring practices.[99] As the platforms and other leading providers of digital payments further expand their market share, they will—unless the Bureau acts—have greater capability to leverage their abundance of consumer financial data, geolocation information, and other profiling sources to engage in financial services operations.

2. Will they in turn use this data to deepen behavioral advertising, engage in price discrimination, or sell to third parties?

Leading platforms and digital payment providers will also expand their capabilities to harness behavioral/programmatic ad data to offer forms of personalized pricing that raise important questions about fairness to consumers. Leading platforms have already integrated machine learning into their ad-decisioning and -placement systems, enabling them to engage in finite predictions about consumer behavior. They also have robust measurement systems in place as

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refusing to guarantee that its advertising algorithms comply with U.S. rules on fair lending, leaving banks and other financial service providers worried that the social media giant could expose them to fines and hits to their reputations, executives said. The federal rules forbid lenders to base their marketing on traits such as race, religion and national origin. Ads that target one racial or ethnic group and exclude another break the law, even if the targeting is done by a computer instead of a human."

[98] Center for Digital Democracy, "Comments of the Center for Digital Democracy: Mobile Device Tracking, Project No. P145401," Federal Trade Commission, https://www.ftc.gov/system/files/documents/public_comments/2014/02/00010-89107.pdf; Center for Digital Democracy, "Big Data is Watching: Growing Digital Data Surveillance of Consumers by ISPs and Other Leading Video Providers," 5 Aug. 2016, https://www.democraticmedia.org/content/big-data-watching-growing-digital-data-surveillance-consumers-isps-and-other-leading-video; Jeff Chester, "CDD Tells FCC to Protect Privacy and Ensure Consumer Protection in the Mobile Marketing/Geo-Location Targeting Era," 13 July 2012, https://www.democraticmedia.org/content/cdd-tells-fcc-protect-privacy-and-ensure-consumer-protection-mobile-marketinggeo-location.

[99] See, for example, PlaceIQ, https://www.placeiq.com; Experian, "Marketing Services: Partners," https://www.experian.com/marketing-services/partners; Cuebiq, "Audience Targeting," https://www.cuebiq.com/location-intelligence/audience-targeting/; Google, "Places API," Google Maps Platform, https://developers.google.com/maps/documentation/places/web-service/place-id; Foursquare, https://foursquare.com; Facebook, "About Targeting Expansion," Meta for Business," https://www.facebook.com/business/help/128066880933676?id=176276233019487; Narrative, "Location Data," https://www.narrative.io/data-types/location-data?campaignid=11140217199&adgroupid=109623567592&adid=465679959036&utm_source=adwords&utm_campaign=data-types&utm_medium=ppc&utm_term=location%20data&hsa_ver=3&hsa_grp=109623567592&hsa_acc=7803427521&hsa_ad=465679959036&hsa_src=g&hsa_tgt=kwd-68753701&hsa_kw=location%20data&hsa_cam=11140217199&hsa_mt=b&hsa_net=adwords&gclid=Cj0KCQiAweaNBhDEARIsAJ5hwbevleN3SHtHc9YS9Qf2bW3piWO1mH6y1f44yWK5JHMXwsMIju_eiCEaAgU_EALw_wcB.

well as real-time targeting and content marketing. They are able to understand what prices a person is paying (pricing intelligence) and what ways that can leverage that data to make a transaction. We request the Bureau to look "under the hood" on how these practices operate, including the transfer of what's called "second-" and "third-" party data for use in online behavioral marketing.[100]

3. **Will these companies operate their payment platforms in a manner that interferes with fair, transparent, and competitive markets?**

The major platforms and key digital payment operators will endeavor to undermine, as much as they can, fair, competitive and transparent markets. Google, Facebook, Amazon and others will bring their unaccountable and strong-arm tactics to wreck the activities of competitors (including positioning them for a buy-out to remove potential competition). The "digital DNA" of these companies is based on an unaccountable and often ruthless manipulation of the market. That's why we need to have the Bureau and its regulatory partners engage in rigorous oversight and enact rules to ensure that Americans get fair treatment in the "embedded finance" system.

We rely on the Subcommittee on Antitrust of the U.S. House Judiciary Committee's recent comprehensive report on four of the firms in the CFPB's inquiry—Amazon, Apple, Facebook, and Google. The report included among its key findings that

> Over the past decade, the digital economy has become highly concentrated and prone to monopolization. Several markets investigated by the Subcommittee—such as social networking, general online search, and online advertising—are dominated by just one or two firms. The companies investigated by the Subcommittee—Amazon, Apple, Facebook, and Google—have captured control over key channels of distribution and have come to function as gatekeepers. Just a decade into the future, 30% of the world's gross economic output may lie with these firms, and just a handful of others.[101]

The subcommittee report continues with an explanation that the four firms use their market power either to neutralize (kill) a nascent competitor or to expand the firm's dominance:

> This significant and durable market power is due to several factors, including a high volume of acquisitions by the dominant platforms. Together, the firms investigated by the Subcommittee have acquired hundreds of companies just in the last ten years. In some

[100] See, for example, Google, "Putting Machine Learning into the Hands of Every Advertiser," Google Ads Help, 10 July 2018, https://support.google.com/google-ads/answer/9065075?hl=en; Facebook, "Make Smarter Business Decisions with Actionable Insights," Meta for Business, https://www.facebook.com/business/measurement; Facebook, "Good Questions, Real Answers: How Does Facebook Use Machine Learning to Deliver Ads?" 11 June 2020, https://www.facebook.com/business/news/good-questions-real-answers-how-does-facebook-use-machine-learning-to-deliver-ads; Nicholas Shaw, "5 E-Commerce Pricing Strategies to Drive Sales Through the Roof," Learn Hub, 14 Apr. 2021, https://learn.g2.com/e-commerce-pricing; "What is Third Party Data?" Snowflake, https://www.snowflake.com/guides/what-third-party-data.

[101] U.S. House, Subcommittee on Antitrust, Commercial and Administrative Law, "Investigation of Competition In Digital Markets," Majority Staff Report and Recommendations, 2020, https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf.

> cases, a dominant firm evidently acquired nascent or potential competitors to neutralize a competitive threat or to maintain and expand the firm's dominance. In other cases, a dominant firm acquired smaller companies to shut them down or discontinue underlying products entirely—transactions aptly described as "killer acquisitions." [102]

4. Will the payment platforms be truly neutral, or will they use their scale to extract rents from market participants? Will small businesses feel coerced into participating in the payment platform out of fear of being suppressed or hidden in search or product listings?

Certainly, current payments platforms—such as the credit and debit card payment networks operated by Visa and Mastercard—already extract excess rents from merchants while also harming consumers.[103] The Big Tech firms want those rents, too, and would be happy to take them from current payment platforms as well as to find new ways to extract them.

5. If these tech companies enter a market that competes with other providers on the platform, will these providers be removed or otherwise disadvantaged?

See answer to Q3. The recent staff report of the Subcommittee on Antitrust of the House Judiciary Committee has already demonstrated the variety of anti-competitive tactics used by Big Tech to remove competitors. Also, surviving providers will also face anti-competitive and predatory practices. As the report explains,

> These firms typically run the marketplace while also competing in it—a position that enables them to write one set of rules for others, while they play by another, or to engage in a form of their own private *quasi* regulation that is unaccountable to anyone but themselves. The effects of this significant and durable market power are costly. The Subcommittee's series of hearings produced significant evidence that these firms wield their dominance in ways that erode entrepreneurship, degrade Americans' privacy online, and undermine the vibrancy of the free and diverse press. The result is less innovation, fewer choices for consumers, and a weakened democracy.[104]

6. What factors will these tech companies use when disqualifying or delisting an individual or business from participating on the platform?

Again, the recent staff report of the Subcommittee on Antitrust of the House Judiciary Committee has already demonstrated the rapacious tactics used by Big Tech to eliminate competitors in a variety of ways. Tactics include predatory pricing, monopsony power, and Big Tech's use of its vast surveillance and data collection apparatus to leverage its power over both consumers and other sellers.[105]

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[102] "Investigation of Competition In Digital Markets."

[103] Ed Mierzwinski, "Federal Reserve Changes to Debit Card Rules Will Help Competition," U.S. PIRG Blog, 15 Aug. 2021, https://uspirg.org/blogs/eds-blog/usp/federal-reserve-changes-debit-card-rules-will-help-competition.

[104] "Investigation of Competition In Digital Markets."

[105] "Investigation of Competition In Digital Markets."

7. **Finally, how will these payment platforms ensure that key consumer protections are adhered to? How effectively do they manage complaints, disputes and errors? Are they sufficiently staffed to ensure adequate steps are taken to address consumer protection and provide responsive customer service when things go wrong?**

The payments space is riddled with inconsistencies in consumer rights depending on the method of payment. While credit cards offer the gold standard of consumer protection under TILA, debit/ATM cards are less protected and prepaid debit cards—both closed-loop gift cards and open-loop Visa or Mastercard branded cards—have even fewer protections under EFTA. Depending on how a merchant clears your check through the ACH system, you may have three different levels of protection.[106] Some lenders have thrived by carving out exceptions; for example, some "industry-approved" state laws exempt rent-to-own payments and payday and other high-cost loans from usury limits and other consumer-protection laws.

USPIRG's recent report, "Virtual Wallets, Real Complaints" focused on problems reported to the CFPB in the "Money transfer, virtual currency or money service" product category and its "mobile or digital wallet" sub-product.[107] Complaint totals in the "mobile or digital wallet" sub-product were led by Paypal, which owns the P2P app Venmo, and Square, which owns the P2P app Cash App. Fully 90 percent of complaints were against ten companies, also including Zelle, as well as against some of the leading banks that together own Early Warning Systems, the parent of the Zelle P2P app. The report's key findings include this telling overview of significant problems:

> The three most common complaints involving digital wallets are problems managing, opening or closing accounts; problems with fraud or scams; and problems with transactions (including unauthorized transactions).… Among PayPal digital wallet complaints, the most common problem is "managing, opening, or closing your mobile wallet account." Some of these complaints describe problems accessing funds. In the narrative published for one such complaint, which led to non-monetary relief, a consumer described problems closing their account and getting their money out: "PayPal has denied access to my account with funds in it and has been slow at 'closing the account down.' ...It's almost been 2 months and I still do not have access to the funds."

The report also found the following: "Customer service frustration is a common feature of complaint narratives. Some consumers describe finding their account closed without explanation, and then being unable to fix their account or find out what happened; 'Venmo closed my account for no reason and will not help me with getting it back up and going.' According to one consumer who had problems with a failed transaction, Zelle has 'no customer service department to call.' A search of its website shows that it does have a 'contact us' page. However, Zelle first encourages you to contact your own bank."[108]

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[106] See generally, "The National Consumer Law Center, Consumer Banking and Payments Law," 1.2.1 Introduction, https://library.nclc.org/cbp/010201.

[107] Mierzwinski, et al, "Virtual Wallets, Real Complaints."

[108] Mierzwinski, et al, "Virtual Wallets, Real Complaints."

Additionally, the report found that P2P apps and banks are relying on their interpretation of an Electronic Fund Transfer Act's Regulation E "unauthorized charges" exception to leave consumers in the lurch when victimized by fraud. But a recent slew of complaints about Zelle-related fraud[109] shows that the CFPB must better enforce its recent update to its "Electronic Fund Transfers FAQs,[110] which clearly state:

> *1. If a third party fraudulently induces a consumer into sharing account access information that is used to initiate an electronic fund transfer from the consumer's account, does the transfer meet Regulation E's definition of "unauthorized electronic fund transfer"?*
> Yes. Regulation E defines an unauthorized electronic fund transfer (EFT) as an EFT from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. 12 CFR § 1005.2(m).…

The organizations below are also signatories to a comment led by the National Consumer Law Center that focuses on fraud and errors in digital payments. Finally, we note that a review of the comments already on file in this docket shows that many of them are from actual consumer-victims of P2P app payment fraud. Their banks have told them they can't help. Thus it's up to the CFPB to fix this broken system and make sure that apps and financial institutions are held accountable and that these consumers are made whole.

Conclusion

The U.S. is at a crucial juncture. The further integration of the country's financial system into the monopolistic and concentrated digital media environment poses serious risks to the public. Decades of lack of oversight have led to the platform problems that are now continually the subject of scandal, headlines and congressional hearings. We believe the Bureau has the capabilities to place the role of digital payments and consumer online financial services on a correct path that benefits the public and our economy. We look forward to the Bureau's engagement on this issue and its forthcoming report and proposals.

Respectfully submitted,

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[109] The recent epidemic of Zelle-related fraud was first noticed by California news outlets in August and September and is apparently spreading nationwide. See Bob Sullivan, "Zelle Hackers 'Improve' Their Scam; Banks Won't Help—But Victims Have a New Place to Complain," 19 Nov. 2021, https://bobsullivan.net/cybercrime/zelle-hackers-improve-their-scam-banks-wont-help-but-victim-have-new-place-to-complain/.

[110] Consumer Financial Protection Bureau, "Electronic Fund Transfer FAQs, 4 June 2021, https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/.