UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the Chair

December 21, 2021

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

RE: CFPB's Inquiry into Big Tech Payment Platforms (Docket No. CFPB-2021-0017-0002)

Dear Director Chopra,

Big Tech companies' moves into payments and financial services markets demand close scrutiny, and I commend the Bureau for its timely inquiry on this topic. As you note, these developments raise key questions around how firms may wield their market power and how they may deploy data acquired through financial surveillance.

In this comment, I identify three areas of concern that I hope can help to inform the CFPB's inquiry. First, Big Tech companies' participation in payments and financial services could enable them to entrench and extend their market positions and privileged access to data and AI techniques in potentially anticompetitive and exploitative ways. Second, Big Tech companies' use of algorithmic decision-making in financial services amplifies concerns of discrimination, bias, and opacity. And third, Big Tech companies' increasingly commingled roles as payment and authentication providers could concentrate risk and create single points of failure.

I will be looking to this inquiry and the findings it produces to help inform the FTC's work. If you have any further questions, please do not hesitate to contact me. I look forward to monitoring this proceeding carefully.

Respectfully submitted,

Lina Khan

Lina M. Khan
Chair, Federal Trade Commission

Before the
CONSUMER FINANCIAL PROTECTION BUREAU
Washington, D.C. 20552

Notice and Request for Comment	)	Docket No. CFPB-2021-0017-0002

COMMENT OF
FTC CHAIR LINA M. KHAN[1]

In this comment I identify three areas of concern that I hope can help to inform the CFPB's inquiry. First, Big Tech companies' participation in payments and financial services could enable them to entrench and extend their market positions and privileged access to data and AI techniques in potentially anticompetitive and exploitative ways. Second, Big Tech companies' use of algorithmic decision-making in financial services amplifies concerns of discrimination, bias, and opacity. And third, Big Tech companies' increasingly commingled roles as payment and authentication providers could concentrate risk and create single points of failure.

1. **Big Tech companies' participation in payments and financial services could enable them to entrench and extend their market positions and privileged access to data and AI techniques in potentially anticompetitive and exploitative ways.**

Big Tech companies serve as critical intermediaries, providing members of the public with a vast array of products and infrastructures that are increasingly necessary for navigating modern life. Many of their services involve collecting and processing vast amounts of personal data. As these same firms also enter payment processing and other financial services, their structural position coupled with their data troves could give them the ability to entrench and extend their market positions in potentially anticompetitive and exploitative ways.[2]

[1] The views expressed in this comment are my own and do not necessarily reflect the views of the Commission or any other Commissioner.

[2] Notably, enforcers around the world have opened inquiries into whether Big Tech companies may wield their infrastructural and data advantages to unlawfully exclude rivals. Enforcers are scrutinizing a host of practices, including Amazon's offering of discounts to consumers that use its payment platform on third-party websites; Amazon's offering of voice-enabled payments through its Alexa voice recognition software; Meta's messaging service WhatsApp automatically pre-installing WhatsApp Pay onto consumer smartphones; Apple Pay's restriction of competitors' access to the critical NFC chip on Apple devices; and Apple's alleged refusal to grant competitors

By offering payment platforms to their users, these firms gain a unique ability to gather and combine hyper-granular data across markets. For example, they can map individual spending information against geolocation, social connections, browsing history, and a host of other sensitive variables. In particular the data gathered on payment and purchase information—including information on instances where exposure to an ad or other marketing is correlated with a purchase—could give them a significant competitive advantage over firms that rely on Big Tech platforms to host their services, apps, and advertisements,[3] as well as over traditional credit bureaus.[4] Big Tech companies' stated plans to offer their own checking account-like products[5] could also provide granular data on consumption that could increase their ability to target and profile consumers, including small businesses that may rely on Big Tech platforms for other services, across their multiple product markets.

Big Tech's participation in the payment processing market could also further entrench this data advantage in markets that they already dominate. In response to an investigation conducted by the Netherlands Authority for Consumers and Markets, several Big Tech companies stated that one of their primary motivations for entering the payments market was to ensure consumers stay within their own suite of products rather than use third-party providers.[6] This drive for consumer capture also explains why companies are unifying a range of financial product offerings within a single payments system, including things like checking products and personalized offer and discount trackers.[7] Critically, keeping consumers within their ecosystem throughout the e-commerce lifecycle translates to additional data streams about consumer spending behavior and advertising effectiveness that could potentially be leveraged by these companies for further market expansion and finely-grained consumer profiling and targeting.

Researchers have also documented how payment processing provides Big Tech companies an on-ramp into other financial services markets like lending, in part because it allows them to combine data on payments, receipts of individual and businesses purchases, and other financial

---

access to Apple Pay for specific products. THE NETHERLANDS AUTHORITY FOR CONSUMERS AND MKTS., BIG TECHS IN THE PAYMENT SYSTEM (Nov. 2020) (English summary of Dutch report); Order Under Sec. 26(2) of the Comp. Act, 2002, *Harshita Chawla v. WhatsApp and Facebook*, COMP. COMM'N OF INDIA, Case No. 15 of 2020, https://www.cci.gov.in/sites/default/files/15-of-2020.pdf; Eur. Comm'n, Press Release: Antitrust: Commission opens investigations into Apple's App Store rules (June 16, 2020), https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1073.

[3] Patrick McGee, *Apple reaches quiet truce over iPhone privacy changes,* FIN. TIMES (Dec. 8, 2021), https://www.ft.com/content/69396795-f6e1-4624-95d8-121e4e5d7839.

[4] Jon Frost et al., *Big Tech and the changing structure of financial intermediation* (BIS, Working Paper No. 779, 2019), https://www.bis.org/publ/work779.htm.

[5] Dieter Bohn, *Google Pay's massive relaunch makes it an all-encompassing money app,* THE VERGE (Nov. 18, 2020), https://www.theverge.com/2020/11/18/21571806/google-pay-relaunch-money-payments-finances-deals-offers-banking-plex

[6] THE NETHERLANDS AUTHORITY FOR CONSUMERS AND MKTS., *supra,* note 2.

[7] Bohn, *supra*, note 5.

information to build alternative scoring models for the future assessment of creditworthiness.[8] With the growing adoption of alternative credit-scoring models that evaluate creditworthiness based on non-traditional data sources, the advantage for Big Tech will likely increase, alongside concerns about opacity, lack of fairness, and potential algorithmic bias.[9]

Lastly, Big Tech's participation in financial services can enable them to serve as both lender and employer—a dual role that merits particular scrutiny.[10] Uber, for example, already offers loans, bank accounts, and credit cards to drivers in multiple geographies,[11] while Amazon markets its own payday lending services to its warehouse workers.[12] Some have expressed concern that this dual role could enable Big Tech firms to combine the significant data they collect monitoring workers[13] with information on workers' financial obligations, a combination they could use to personalize interest payments and calibrate exactly how long a worker must work to stay afloat.[14] As enforcers, we must be especially attentive to potentially extractive loan terms that might lock workers into longer hours and lower pay, or that otherwise harness Big Tech's information and power asymmetries to tailor unfair and exploitative lending services and pay rates. Big Tech's growing role as a lender to the small businesses that depend on their platforms to access markets may raise similar concerns.

2. Big Tech companies' use of algorithmic decision-making in financial services amplifies concerns of discrimination, bias, and opacity.

In their mainstay businesses, Big Tech firms rely heavily on AI and related algorithmic techniques that profile, authenticate, and score consumers based on expansive profiles of user data. Given that research suggests these practices have a concerning record of inaccurate, biased, and discriminatory outcomes,[15] Big Tech firms' expansion into payment and financial services

---

[8] Frost et al., *supra*, note 4, at 7. For example, in the Chinese context, Ant Financial worked to circumvent the lack of credit data by supplying farmers with payment processors allowing them to pay via Alipay ("With the obtained transactions data the firm was able to use the MYbank scoring system to offer credit to these customers.").

[9] Nizan G. Packin & Yafit Lev Aretz*, Big Data and Social Netbanks: Are you Ready to Replace your Bank?*, 53 HOUS. L. REV. 1, 56 (2016).

[10] I use the term "employer" here to connote both the hiring of full time employees, in a traditional sense, and the increasing use of so-called "independent contractors" as laborers.

[11] Hugh Son, *Uber announces deeper push into financial services with Uber Money,* CNBC (Oct. 28, 2019) https://www.cnbc.com/2019/10/28/uber-announces-deeper-push-into-financial-services-with-uber-money.html.

[12] *Amazon Anytime Pay - Payday, whenever you want it*, AMAZON JOBS, https://hiring.amazon.com/promotions/anytime-pay#/ (last visited Dec. 21, 2021).

[13] WORKER INFO EXCHANGE, MANAGED BY BOTS: DATA-DRIVEN EXPLOITATION IN THE GIG ECONOMY (Dec. 2021); Jay Greene, *Amazon's employee surveillance fuels unionization efforts: "It's not prison, it's work",* WASH. POST (Dec. 2, 2021), https://www.washingtonpost.com/technology/2021/12/02/amazon-workplace-monitoring-unions/; Spencer Soper, *Amazon Delivery Partners Rage Against the Machines: 'We were treated like robots'*, BLOOMBERG (Oct. 7, 2021), https://www.bloomberg.com/news/features/2021-10-07/amazon-delivery-partners-claim-treated-like-robots-by-algorithms.

[14] Veena Dubal, *Uber's new loan program could trap drivers in cycles of crushing debt,* THE GUARDIAN (Dec. 5, 2019), https://www.theguardian.com/commentisfree/2019/dec/05/uber-loan-program-debt.

[15] Joy Buolamwini, *Artificial Intelligence Has a Problem with Gender and Racial Bias. Here's How to Solve It* , TIME MAG. (Feb. 7, 2019), https://time.com/5520558/artificial-intelligence-racial-gender-bias/*;* Robert Bartlett et al.,

raises the risk that these same algorithmic decision-making processes could produce and replicate inequality and discrimination in new contexts.[16]

Research has shown, for example, that the type of AI-enabled voice recognition systems that some Big Tech companies are enabling for payments persistently "hear" lower-pitched (more masculine) non-accented speech with more accuracy than speech from people with higher-pitched voices who speak with accents.[17] More generally, as these companies turn to credit markets and alternative credit-scoring techniques to produce a profile of someone's "digital character," potentially skewed data and assumptions used to inform these profiles could entrench, naturalize, and amplify discriminatory determinations.[18]

These types of algorithmic tools are often referred to as "black boxes" due to their obscurity and inscrutability.[19] They are generally developed and used by private companies, hidden behind claims of trade secrecy, and largely implemented in ways that are unknown to those they profile and assess.[20] This makes recognizing potentially biased or inaccurate determinations—especially when such recognition would require comparative data across aggregate populations—difficult.[21] Therefore, efforts by enforcers and regulators to scrutinize and investigate these tools for potentially unlawful bias are especially critical.

3. Big Tech companies' increasingly commingled roles as payment and authentication providers could concentrate risk and create single points of failure.

Third parties across the web rely on tech companies to validate consumer identities through single sign-on identity authentication (SSO).[22] While SSO offers users a convenient way of

---

Consumer-Lending Discrimination in the FinTech Era (Nat'l Bureau of Econ. Res., Working Paper No. 25,943, 2019), https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf.

[16] Neil Vigdor, *Apple Card Investigated After Discrimination Complaints*, N.Y. TIMES (Nov. 10, 2019), https://www.nytimes.com/2019/11/10/business/Apple-credit-card-investigation.html.

[17] Joan Palmiter Bajorek, *Voice recognition still has significant race and gender biases,* HARV. BUS. REV. (May 10, 2019), https://hbr.org/2019/05/voice-recognition-still-has-significant-race-and-gender-biases; UNESCO, I'D BLUSH IF I COULD: CLOSING GENDER DIVIDES IN DIGITAL SKILLS THROUGH EDUCATION (2019); Cade Metz, *There is a Racial Divide in Speech-Recognition Systems, Researchers Say.* N.Y. TIMES (Mar. 23, 2020), https://www.nytimes.com/2020/03/23/technology/speech-recognition-bias-apple-amazon-google.html;

[18] FED. TRADE COMM'N BIG DATA: A TOOL FOR INCLUSION OR EXCLUSION?, FTC REP. (Jan. 2016); SARAH MYERS WEST ET AL., DISCRIMINATING SYSTEMS: GENDER, RACE AND POWER IN AI, AI NOW INST. (Apr. 2019); TAMARA K. NOPPER, DIGITAL CHARACTER (2019) (*see The Scored Society: FICO, Social Networks, And Competing Measurements of Creditworthiness* and *Captivating Technology: Race, Carceral Technoscience and Liberatory Imagination in Everyday Life*).

[19] FRANK PASQUALE, THE BLACK BOX SOCIETY: THE SECRET ALGORITHMS THAT CONTROL MONEY AND INFORMATION (2016).

[20] Danielle Citron & Frank Pasquale, *The Scored Society: Due Process for Automated Predictions*, 89 WASH. LAW REV. 1 (2014).

[21] *Id.*

[22] Some examples include Apple ID, Google Sign-In, and "Log-in with Facebook." *Intro to Single Sign-on with Apple Devices*, APPLE, (Oct. 27, 2021), https://support.apple.com/guide/deployment/intro-to-single-sign-on-depfdbf18f55/web; *Integrating Google Sign-In into your web app*, GOOGLE IDENTITY, https://developers.google.com/identity/sign-in/web/sign-in (last visited Dec. 21, 2021); *Facebook Login*, META FOR DEVELOPERS, https://developers.facebook.com/docs/facebook-login (last visited Dec. 21, 2021).

accessing integrated applications, it also has the potential to concentrate risk and create a single point of failure.

Big Tech firms' dual role as providers of SSO and providers of financial services raises several risks. For small businesses, this combination heightens the possibility of being arbitrarily locked out of payment processing and financial services.[23] It could mean, for example, that one social networking platform's decision to disable the account of a small business for a reason unrelated to their financials—an alleged violation of community guidelines, for example, or running afoul of content policies—could also cut off the business from core financial services also provided by that platform. The stakes of any single platform's content moderation and other decisions become even higher when firms depend on its services for income and livelihood.

The fact that Big Tech firms' standards for banning accounts or cutting off access are often vague and opaque exacerbates these risks. For example, Facebook uses automated AI tools to ban accounts, a decision that can bar users from access for up to 30 days with little to no recourse for users who are kicked off.[24] Similarly, the opacity around Big Tech's content and speech policies—and the fact that these platforms reportedly enable coordinated bad actors to trigger account bans and deletion via targeted "reporting"[25]—tends to disempower users, whose find that their access to increasingly critical services is subject to the vague content policies and arbitrary moderation decisions of either a single firm or a small number of entities.

In the select instances where Big Tech companies do offer appeals processes or customer support services for account deletions and bans, users frequently report confusion as to how these processes work and profess limited confidence that these processes are effective or fair.[26] The recently reported example of consumers buying costly Oculus VR headsets as a "hack" in attempts to regain access to their Facebook accounts illustrates generally the limited options and support available to those who find themselves banned.[27]

Allowing Big Tech firms to expand into payments and financial services also raises concerns about Big Tech functioning as a single point of failure, in which a problem that affects a consumer in one domain can have outsized ramifications across other seemingly separate domains that are connected only through the centralization of Big Tech infrastructure. Allowing SSO to serve as the gateway to an increasingly essential set of services concentrates risk. Recent incidents already highlight how this type of concentration can heighten fragility, given that a single outage or technological vulnerability can have cascading ramifications with systemic

---

[23] Sarah Myers West, *Censored, suspended, shadowbanned: User interpretations of content moderation on social media platforms*, NEW MEDIA & SOC. (May 8, 2018).
[24] Rachael Myrow, *Incorrectly Deleted From Facebook? Getting Back On Might Take Connections*, KQED (Dec. 15, 2021), https://www.kqed.org/arts/13907310/facebook-account-deletion-ai-content-moderation-failure.
[25] Brian Contreras, '*I need my girlfriend off TikTok': How hackers game abuse-reporting systems*, L.A. TIMES (Dec. 3, 2015), https://www.latimes.com/business/technology/story/2021-12-03/inside-tiktoks-mass-reporting-problem.
[26] West, *supra*, note 23.
[27] Jay Peters, *Buying an Oculus headset to help get your Facebook account back is a risky move,* THE VERGE (Aug. 4, 2021), https://www.theverge.com/2021/8/4/22609603/facebook-account-hacked-access-oculus-quest.

implications.[28] Given the centrality of these services, guarding against systemic fragility is critical.

In conclusion, I thank the CFPB for soliciting public input on this important topic and for pursuing this timely inquiry. The potential risks created by Big Tech's expansion into payments and financial services are notable and demand close scrutiny. I look forward to monitoring this proceeding carefully.

***

[28] Karen Weise, *Amazon's cloud computing outage disrupts its warehouse operations,* N.Y. TIMES (Dec. 7, 2021), https://www.nytimes.com/2021/12/07/technology/aws-outage-amazon-deliveries.html; Brian Barrett, *Why Facebook, Instagram, and WhatsApp All Went Down Today*, WIRED (Oct. 4, 2021), https://www.wired.com/story/why-facebook-instagram-whatsapp-went-down-outage/.