TESTIMONY OF ANDY MORRISON, ASSOCIATE DIRECTOR
ON BEHALF OF NEW ECONOMY PROJECT
BEFORE THE NYS ASSEMBLY STANDING COMMITTEES ON BANKS AND SCIENCE AND TECHNOLOGY

"IMPACT OF FINANCIAL TECHNOLOGY (FINTECH) AND ITS ROLE IN NEW YORK'S BANKING INDUSTRY"

March 7, 2024

Good morning, Chairs Hunter and Otis and members of the committees. Thank you for the opportunity to testify at today's hearing on behalf of New Economy Project, a New York City-based economic justice organization. For almost three decades, New Economy Project has worked with community groups and low-income New Yorkers to combat persistent redlining, predatory lending, and other inequities in our financial system and economy that perpetuate poverty, inequality, and segregation. We also work with community groups to democratize finance, land, housing, jobs, renewable energy, and other sectors of our economy – through public banking, community development financial institutions (CDFIs), community land trusts, worker cooperatives, and other community-controlled economic development strategies.

New Economy Project's accomplishments include organizing broad-based coalitions and campaigns that have successfully kept payday lending and other debt traps out of New York State, ended employment discrimination based on credit history in New York City, and won passage of state legislation combating predatory lending and abusive debt collection, most recently by protecting pandemic stimulus payments from debt collection. We secured funding for the country's first state-based fund for CDFIs and supported the creation of New York City's municipal ID program, among other strategies to expand fair banking access for low-income, undocumented, and other underserved New Yorkers. And we have provided direct legal assistance to thousands of low-income New Yorkers and New Yorkers of color through our NYC Financial Justice Hotline, and brought impact litigation against big banks, debt buyers, and other actors, obtaining hundreds of millions of dollars in monetary awards and other relief for New Yorkers.

Today's hearing on the impact of financial technology within New York's banking sector presents a vital opportunity to begin reshaping our state's approach to financial services policy and economic justice. My testimony will address the dangers posed by predatory

financial technology, or 'fintech,' and the urgent need for New York State to advance structural reforms. This includes closing loopholes in our usury law exploited by fintech companies and other predatory financial services companies, as well as supporting initiatives and institutions such as public banking and Community Development Financial Institutions (CDFIs) to expand access to equitable financial services in New York State.

It is abundantly clear that New York has not effectively tackled systemic inequities in our financial system and economy. A recent *Forbes* report ranked New York the sixth worst state in the country when it comes to banking access.[1] For decades, our organization has documented persistent patterns of bank redlining and other forms of financial exclusion, which disproportionately harm Black and brown New Yorkers and neighborhoods.[2] An October 2023 report from the Office of the New York State Attorney General Letitia James further revealed widespread redlining statewide, underscoring that "[p]ublic policy has thus far failed to address" lending disparities, reflecting a need for "structural reforms."[3]

This failure by state and federal policymakers has fueled banking inequality and emboldened financial predators, many of whom pose as agents of progress while peddling costly, inferior and exploitative products. This phenomenon, increasingly recognized as 'predatory inclusion,' has long plagued communities of color, evident in the proliferation of high-cost fringe financial services such as check cashers and pawn shops in redlined neighborhoods.

More recently, fintech companies have sought to exploit the unmet need in low-income Black and brown communities – often using seductive rhetoric such as "innovation" and "financial inclusion" to persuade policymakers that their services are needed, and even beneficial. Yet, fintech companies frequently attempt to circumvent usury and other consumer protection laws through regulatory arbitrage;[4] have been subject to federal enforcement actions stemming from repeated illegal activity;[5] and purportedly rely on racially biased underwriting algorithms, fueling concerns of systemic discrimination in their lending practices.[6] Their invasive data collection practices also pose significant privacy and surveillance risks to people, including undocumented

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[1] *Forbes*, "States With The Best And Worst Banking Access" at https://www.forbes.com/advisor/banking/best-and-worst-states-for-banking/
[2] New Economy Project at https://www.neweconomynyc.org/type/maps/
[3] NYS Office of the Attorney General, "Racial Disparities in Homeownership: How lending practices have preventedNew Yorkers of color from purchasing homes and deepened wealth inequality" at https://ag.ny.gov/sites/default/files/reports/oag-report-racial-disparities-in-homeownership.pdf
[4] Christopher K. Odinet, " Predatory Fintech and the Politics of Banking" at https://ilr.law.uiowa.edu/print/volume-106-issue-4/predatory-fintech-and-the-politics-of-banking
[5] CFPB, "CFPB Fines Repeat Offender Enova $15 Million for Violating Order, Deceiving Customers, and Withdrawing Funds Without Consent" at https://shorturl.at/lHRY7
[6] Kristin Johnson, "Artificial Intelligence, Machine Learning, and Bias in Finance: Toward Responsible Innovation" at https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5629&context=flr

New Yorkers.[7] While financial technology can offer benefits to underserved communities, fintech companies too often exploit unmet needs, perpetuating poverty and inequality.

EARNED WAGE ADVANCE: FINTECH PAYDAY LOANS ON YOUR SMARTPHONE

The latest manifestation of fintech's 'predatory inclusion' is exemplified by the rise in Earned Wage Advance (EWA), which is essentially payday lending by another name. Earned Wage Advance, or EWA, is a euphemism for predatory small-dollar, short-term loans specifically targeted at low-wage and gig economy workers, accessible through a smartphone application. Fintech companies use deceptive marketing to mask EWA's exorbitant and predatory fees, which amount to an effective average APR of more than 300%. For example, companies tout the product as free but may require payment of an "expedite fee" to receive instant access, and use manipulative behavioral economics techniques to coax users to "tip" as part of receiving an advance. In fact, California regulators found that 73% of EWA transactions paid "tips" and that lenders employed multiple strategies to "make tips almost as certain as required fees."[8]

Although EWA companies are plainly making loans, they argue that they are not lenders by relying on a litany of legal fictions and other prevarications, including that they simply advance access to the employee's own money and do not require any mandatory payments. Yet, California regulators again found that "as a practical matter," EWA users agree to repay and the companies collect 97% of the time.[9]

New York's strong usury law caps interest rates at 25%, effectively keeping insidious payday lending out of our state and protecting low-income New Yorkers and New Yorkers of color from the fee drain and debt trap that are part and parcel of the payday lending industry's business model. Given that EWA loans bear many of the hallmarks of traditional payday lending – extremely high APRs, repeat borrowing, and the triggering of costly bank overdraft fees – the legislature must not allow EWA companies to circumvent our strong usury law.

Recently, California[10] (where, unlike New York, payday lending is legal) released data clearly demonstrating the egregious harms that result from EWA products. Among other findings, they reported that EWA products are characterized by:

- High APRs: The average annual percentage rate (APR) in California was ~**330%** across the industry.

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[7] *The City*, "City's IDNYC Smart Card Chip Plan Slammed as Security Risk" at https://www.thecity.nyc/2019/09/12/city-s-idnyc-smart-card-chip-plan-slammed-as-security-risk/

[8] California Department of Financial Protection and Innovation, " 2021 Earned Wage Access Data Findings" at https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf?emrc=08148f

[9] *Ibid*.

[10] *Supra* note 8.

- Repeat borrowing: California consumers took out **36 advances a year** on average, and up to 100.
- Very **little credit extended**: Most advances were between $40 and $100, for an average of 10 days.

Given the numerous concerns and reports of EWA abuses, we are concerned that the Department of Financial Services (DFS) has not cracked down on EWA companies' usurious lending practices in the same way the agency cracked down on illegal online payday lending in the past.[11] We are further troubled by DFS Superintendent Adrienne Harris's reported comments in the press regarding EWA, particularly the assertion that EWA can aid families living paycheck to paycheck in managing their expenses more effectively.[12] Such remarks suggest DFS may be turning a blind eye to the threats EWA poses to New Yorkers. To that end, we strongly oppose legislation like A5053, which regrettably this committee unanimously approved last year, that exempts EWA loans from our usury law and gives the state's imprimatur to high-cost debt traps, all under the guise of regulation.

FINTECH RHETORIC FAILS TO MATCH THE REALITY

The fintech industry is notorious for promising quick-fix or blanket "solutions" that fail to address – and too often exacerbate – banking inequality. Poorly regulated financial institutions promising innovation have, in fact, served to entrench lending disparities and the racial wealth divide. This was most glaringly evident in the subprime mortgage and foreclosure crisis, which ravaged communities of color and obliterated hard-won homeownership gains.

We urge this committee to take a hard look at industry claims of "innovation" and purported "fintech" benefits, which often fail to align with reality, especially for low-income New Yorkers and communities of color. We urge you also to consult with advocates and community groups – including those that are led by and serve populations targeted by fintechs – rather than take industry claims at face value. I once spoke at a legislative roundtable discussion where a fintech representative touted the industry's purported success in meeting the small businesses' credit needs during the pandemic. In fact, small businesses reported broad dissatisfaction with the services they received from fintech companies, according to a Federal Reserve survey.[13] Less than a fifth of small businesses expressed satisfaction with services they received from fintech lenders during the pandemic. By contrast, Community Development Financial Institutions (CDFIs) received the highest level of satisfaction from small businesses.

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[11] Department of Financial Services, "Cuomo Administration Demands 35 Companies Cease And Desist Offering Illegal Online Payday Loans That Harm New York Consumers" at https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1308061

[12] *PYMNTS*, "NY's Fin Services Regulator Says Faster Money Movement Bears Closer Scrutiny" at https://www.pymnts.com/news/regulation/2022/nys-fin-services-regulator-says-faster-money-movement-bears-closer-scrutiny/

[13] Federal Reserve, "Small Business Credit Survey: 2021 Report on Employer Firms," at https://www.newyorkfed.org/medialibrary/media/smallbusiness/2021/SBCS-Employer-Firms-Report-2021

POLICY RECOMMENDATIONS

CLOSE ‘BACKDOORS TO USURY’ THAT ARE EXPLOITED BY FINTECH AND OTHER PREDATORY LENDERS

We are currently working with state lawmakers and partners in the NYS Community Equity Agenda coalition to secure introduction of legislation that will close every potential backdoor to our usury law, leaving no opportunity for fintech or other predatory lenders to undermine its integrity and exploit New Yorkers. New York’s usury law makes it unlawful to engage in payday and other forms of predatory lending in our state. However, several industries have secured carve-outs from the law, and fintech companies increasingly seek to circumvent our usury law by misrepresenting their loans as something other than lending. New legislation will ensure that these and other companies no longer get away with fleecing New Yorkers.

For example, under our coalition’s proposed bill, EWA would be subject to New York’s usury law, capping interest rates at 25% APR. The bill would clarify that EWA products are loans and that the “tips” and other fees that users are induced to pay are correctly calculated as interest. The bill would also cover 'Buy Now Pay Later' and other emerging fintech products to ensure that any fees or interest charged do not exceed New York's usury cap. We look forward to working with the Banks Committee and others to secure passage of this urgently needed legislation this session.

ADVANCE SOLUTIONS FOR FINANCIAL JUSTICE AND COMMUNITY WEALTH BUILDING

If New York is serious about meeting New Yorkers’ income and financial services needs, the state should establish a living wage and advance other policies that address root causes of inequality and poverty. We urge the legislature, for example, to support public banks and CDFIs that serve historically redlined Black, brown, and immigrant communities with high-quality, responsible financial services.

New York Public Banking Act (A3352)

We applaud Chair Hunter for championing the New York Public Banking Act (NYPBA) and urge the Banks Committee to advance the bill this session. The NYPBA creates an urgently needed regulatory framework for local public banks in New York. Public banks would hold local government deposits and reinvest in deeply affordable housing, small and worker-owned businesses, renewable energy, and other community economic development initiatives.
Public banks would strengthen New York’s financial sector by partnering with CDFIs and other community-based financial institutions to promote responsible lending and expand safe and affordable banking services in historically redlined Black, brown, and low-income neighborhoods. Public banks would provide local lenders with key support – such as liquidity, secondary capital, and credit enhancements – to help them expand and diversify their lending. A

recent report from the Center for NYC Affairs at The New School found that, in just its first five years, a NYC public bank would direct nearly $6 billion in new lending to low-income and historically redlined neighborhoods, much of it in partnership with CDFIs and other responsible lenders.[14]

The century-old public Bank of North Dakota (BND) offers proof of concept. The bank is credited with bolstering local financial institutions through its longstanding partnership model. The BND has a loan portfolio of more than $5 billion,[15] approximately half of which is lent out in partnership with community banks and credit unions.[16] As a result, North Dakota has more local banks and credit unions per capita than any other state and nearly six times the number of financial institutions per capita than the U.S. overall.[17]

Fix the NYS CDFI Fund

As you know, CDFIs play a crucial role in New York, providing responsible and affordable loans and other financial services in low-income, immigrant, and historically redlined communities. In 2007, New York State established – but failed to fund – the nation's first state-based CDFI Fund, modeled after the successful federal CDFI Fund, which provides flexible grant funding to CDFIs to help them build capacity and expand lending and other vital services.

In 2019, NYS committed $25 million to the state CDFI Fund. Unfortunately, New York has failed to adequately administer the state's CDFI Fund, nor has the state distributed these critical funds in a timely manner. These implementation failures raise serious questions about the state's commitment to addressing persistent banking inequality.

New York must repair the NYS CDFI Fund to ensure it achieves its intended purpose: to provide CDFIs with flexible funding to build their capacity and strengthen their work in low-income communities and historically redlined Black and brown neighborhoods. New York's CDFI Fund should be redesigned to mirror the federal CDFI Fund's Rapid Response Program, and then the state must immediately distribute the remaining $15 million of the $25 million allocated.

Thank you again for the opportunity to testify today.

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[14] Center for NYC Affairs, "The Economic Impact of a New York City Public Bank," at https://www.centernyc.org/reports-briefs/the-economic-impact-of-a-new-york-city-public-bank
[15] Bank of North Dakota, "2022 Annual Report," at https://bnd.nd.gov/bank-of-north-dakota-releases-2022-annual-report/
[16] Institute for Local Self Reliance, "Public Banks: Bank of North Dakota," at https://ilsr.org/rule/bank-of-north-dakota-2/
[17] *Ibid*.