

Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Comment Regarding the CFPB's Inquiry Into Buy-Now-Pay-Later (BNPL) Providers
(CFPB-2022-0002)

Dear Director Chopra,

The undersigned 77 consumer, housing, civil rights, legal services, faith, community, small business, student borrower, and public interest organizations appreciate the opportunity to comment on the CFPB's inquiry into Buy Now, Pay Later (BNPL) credit products that are proliferating across market areas. We welcome the CFPB's recent inquiry into Affirm, Afterpay, Klarna, PayPal, and Zip, however we remain alarmed by the lack of regulation of this exploding consumer credit product market. We urge the CFPB to view BNPL products as credit cards covered by the Truth in Lending Act (TILA), to enact a larger participant rule to supervise this market, and to look out for practices that harm consumers.

BNPL credit may provide some consumers with an affordable way to finance purchases, as the business model typically allows consumers to purchase an item by only paying a portion of the price up front and pay the rest of the debt in three equal, interest-free installments over a set period (usually 6 weeks). However, BNPL credit presents cause for concern, including: a lack of meaningful underwriting for a consumer's ability to repay; hidden fees and absence of clear disclosures; lack of dispute or refund rights should a consumer be unsatisfied with their purchase; an incentive created that could lead consumers into taking on unmanageable amounts of debt; a negative impact on credit reporting; and debt collection issues.

Buy Now, Pay Later (BNPL) options have increased dramatically in recent years. Although purchases financed with BNPL account for only 3% of U.S. online shopping revenue as of December 2021, 8.42 million consumers used BNPL in December 2021, which marked an all-time high.¹ Roughly one third of U.S. adults say that they have used BNPL,² and this is likely to grow dramatically—the industry is expected to increase 10 to 15 times its current size by 2025.³ In California, the top six BNPL providers originated more than 10 million loans to consumers in 2020, which accounted for 91% of all non-bank consumer loans originated in the state that year.⁴

Based on complaints to the CFPB and Better Business Bureau, consumers are already being harmed by a lack of regulatory oversight.⁵ Oversight is especially urgent as these offerings

¹Jonathan Berr, Payments Dive, "Buy now-pay later demand hit U.S. high during holiday season" (Jan. 14, 2022), <https://www.paymentsdive.com/news/buy-now-pay-later-demand-hit-us-high-during-holiday-season/617146/>.

²Erika Giovanetti, Dan Shepard, LendingTree "Shoppers Use 'Buy Now, Pay Later' Financing to Purchase Things They Can't Afford" (Apr. 20, 2021), <https://www.lendingtree.com/personal/buy-now-pay-later-survey/>.

³CB Insights, *Disrupting The \$8T Payment Card Business: The Outlook On 'Buy Now, Pay Later'* (Mar. 2, 2021), <https://www.cbinsights.com/research/report/buy-now-pay-later-outlook/> [hereinafter CB Insights, *Disrupting* (Mar. 2021)].

⁴California Department of Financial Protection and Innovation, *Annual Report of Finance Lenders, Brokers, and PACE Administrators Licensed Under the California Financing Law* (Jan. 2022), <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/10/2020-CFL-Aggregated-Annual-Report.pdf>.

⁵Ed Mierzwinski and Mike Litt, U.S. PIRG, *The Hidden Costs of "Buy Now, Pay Later: " Complaints to the CFPB Show Need for Action*, (Mar. 2022), https://uspirg.org/sites/pirg/files/reports/BNPL%20REPORT%20USPIRG_0.pdf.

continue to expand and infiltrate new market areas that pose even great risks to consumers.⁶ Additionally, without supervision, this product has potential to contribute to unaffordable debt loads. Allowing these products to escape coverage would lead to an undermining of consumer protection laws,⁷ making the financial marketplace less fair and competitive.

Small businesses also benefit from oversight of the financial products marketed towards their business and their employees, as small employers want to improve access to tools that help both themselves and their workers.

Consumer Risks

Marketing of BNPL credit is enticing, with promises of instant approval and no impact on a consumer's credit. However, many providers are **not conducting meaningful underwriting to assess a borrower's ability to repay** along with the rest of a consumer's financial obligations. Although some providers run a "soft" credit check, others do not check credit at all. Many BNPL providers offer the first extension of credit with a limited assessment of the consumer's current obligations, and base future purchase approvals and spending limits on the number of past purchases and on-time payments made on that BNPL application, rather than assessing the consumer's ability to repay the credit within the context of all financial obligations. Without holistically considering a consumer's ability to repay, consumers may accumulate unaffordable amounts of debt or trigger overdraft and non-sufficient fund fees if repayment is made with a debit card.⁸ According to one recent survey, nearly 40% of BNPL users said that they used BNPL credit to make purchases that would otherwise not fit in their budget.⁹ Additional recent analysis found that consumers who had overdrafted their account were more than twice as likely to have used BNPL services.¹⁰

BNPL products offer a promise of interest-free payments, **but many providers charge fees, including late fees, missed payment fees, account reactivation fees, returned payment fees, and rescheduling fees that are not clearly disclosed.** Research by the United Kingdom Financial Conduct Authority found that for some providers that charge fees, these fees can make up a significant portion of the company's revenue.¹¹ Fees vary depending on the provider, but can reach as high as \$25.¹² Unpaid or late fees can trigger overdraft fees in a consumer's bank

⁶Student Borrower Protection Center, *Point of Sale Fail: How a Flood of "Buy Now, Pay Later" Student Debt is Putting Millions at Risk* (Mar. 2022), https://protectborrowers.org/wp-content/uploads/2022/03/SBPC_BNPL.pdf.

⁷ Lauren Saunders, National Consumer Law Center, Testimony to Task Force on Financial Technology U.S. House Committee on Financial Services Hearing on "Buy Now, Pay More Later? Investigating Risks and Benefits of BNPL and Other Emerging Fintech Cash Flow Products" (Nov. 2, 2021), https://www.nclc.org/images/pdf/banking_and_payment_systems/fintech/Fintech-task-force-liquidity-testimony-Lauren-Saunders-2021-11-2-FINAL.pdf.

⁸ Marisabel Torres, Center for Responsible Lending, Testimony to Task Force on Financial Technology U.S. House Committee on Financial Services Hearing on "Buy Now, Pay More Later? Investigating Risks and Benefits of BNPL and Other Emerging Fintech Cash Flow Products" (Nov. 2, 2021), <https://financialservices.house.gov/uploadedfiles/hhrg-117-ba00-wstate-torresm-20211102.pdf>.

⁹Insider Intelligence, Business Insider, *Buy Now Pay Later Report: Market trends in the ecommerce financing, consumer credit, and BNPL industry* (Feb. 3, 2022), <https://www.insiderintelligence.com/insights/buy-now-pay-later-ecommerce-financing-consumer-credit/>.

¹⁰ Claire Williams, Morning Consult, "'Buy Now, Pay Later' Users Significantly More Likely to Overdraft Than Nonusers" (March 2, 2022), <https://morningconsult.com/2022/03/02/buy-now-pay-later-bnpl-overdraft-data/> [hereinafter Williams, BNPL users (Mar. 2022)].

¹¹ Personal Finances and Funds Team, U.K. HM Treasury, *Regulation of Buy-Now Pay-Later Consultation* (Oct. 2021), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1027366/210923_-_BNPL_condoc_-_Cleared.pdf.

¹² Leticia Miranda, NBC News, "The Hidden Costs of 'Buy Now, Pay Later' Loans" (Nov. 4, 2021), <https://www.nbcnews.com/business/consumer/hidden-costs-buy-now-pay-later-loans-rcna4367>.

account; thus, a consumer can be charged by both the BNPL provider and their bank.¹³ Some providers charge returned payment fees, which are triggered when a payment is returned unpaid due to insufficient funds and may also trigger an additional bank fee for the consumers.¹⁴ These fees can accumulate quickly and be incredibly damaging to consumers, as overdraft and NSF fees are highly associated with closed bank accounts, leading to financial exclusion.¹⁵ Further, some BNPL products can only be used with a credit card, resulting in the consumer potentially being charged interest or charges imposed by the credit card company in addition to any fees associated with the BNPL product.¹⁶

Consumers have limited access to refund or redress should there be a problem with the item purchased. If a consumer has a problem with the product purchased, refund and return rights vary between providers, and again, information about these rights is difficult to find.¹⁷ According to complaints to the CFPB and Better Business Bureau, consumers face difficulty initiating disputes, lengthy delays in receiving a refund, and continuing collection of repayment during the refund and return process.¹⁸

Lack of clear and uniform consumer disclosures and statement requirements make it difficult for consumers to understand potential costs, to compare fees amongst providers, and to keep track of multiple BNPL credit extensions and payments at a given time. Products and providers do not uniformly or clearly disclose how much fees are, where to find information about fees, and whether fees are capped. Some fees are listed in the terms and conditions, while others are listed in an installment agreement or in the “frequently asked questions” sections on websites. Certain products contain disclosures about the possibility of a fee without an indication of the amount of that fee. Further, each consumer purchase of a product or good is financed with its own payment plan and has its own payment due dates, as opposed to a single, monthly payment like other forms of credit. A single monthly payment is easier to track and manage than various payments throughout the month. Consumers with multiple BNPL credit plans may find them difficult to track since due dates vary based on the date of purchase. According to a recent Morning Consult survey, 20% of BNPL users have missed a payment.¹⁹ In some instances, BNPL credit has been subject to rescheduling fees for consumers who need to move their payments, making it burdensome for consumers to change the payment schedule should an unexpected financial obligation arise.²⁰

¹³ U.K. Financial Conduct Authority, *The Woolard Review - A Review of Change and Innovation in the Unsecured Credit Market* (Feb. 2, 2021), <https://www.fca.org.uk/publication/corporate/woolard-review-report.pdf> [hereinafter U.K. Financial Conduct Authority, Woolard Review (Feb. 2021)].

¹⁴ For example, Klarna charges a \$25 (or any lower amount required by law) if payment is returned unpaid for “non-sufficient funds.” See Klarna Pay in 4 Agreement, https://cdn.klarna.com/1.0/shared/content/legal/terms/0/en_us/sliceitinx.

¹⁵ Center for Responsible Lending Statement for the Record: *Overdraft Fees Cause Financial Exclusion; Policymakers Must Act Hearing on “Banking the Unbanked: Exploring Private and Public Efforts to Expand Access to the Financial System” Before the U.S. House Committee on Financial Services, Subcommittee on Consumer Protection and Financial Institutions* (July 21, 2021), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-testimony-overdraft-financial-exclusion-21jul2021.pdf>.

¹⁶ For example, Splitit charges all payment to a credit card rather than a bank account, see terms and conditions, (Nov. 5, 2021) <https://www.splitit.com/shopper/>.

¹⁷ Penelope Wang, Consumer Reports, “The Hidden Risks of Buy-Now, Pay-Later Plans” (Feb. 14, 2021), <https://www.consumerreports.org/shopping-retail/hidden-risks-of-buy-now-pay-later-plans-a7495893275/>.

¹⁸ Rachel Gittleman, Consumer Federation of America, Statement for the Record for Task Force on Financial Technology U.S. House Committee on Financial Services Hearing on “Buy Now, Pay More Later? Investigating Risks and Benefits of BNPL and Other Emerging Fintech Cash Flow Products” (Nov. 2, 2021), <https://consumerfed.org/wp-content/uploads/2021/11/CFA-Submits-Statement-for-the-Record-to-U.S.-House-Task-Force-11.2.21.pdf>.

¹⁹ Williams, BNPL users (Mar., 2022)

²⁰ For example, Sezzle provides one free reschedule on every order, but charges fees for any payment moves beyond that, see <https://shopper-help.sezzle.com/hc/en-us/articles/360045946992-How-do-I-reschedule-a-payment->.

New financial products can result in disparate impacts on communities of color and other financially vulnerable consumers. **It is essential that the CFPB apply anti-discrimination laws to new lending platforms, and especially BNPL credit, which is disproportionately used by Black and Hispanic Americans,** along with young adults.²¹ Negative disparate impacts of new products will further harm disadvantaged communities. For young adults, who are just starting to build their credit profiles, the lack of sufficient oversight of BNPL credit has the potential to negatively impact credit building.

BNPL has been promoted by some as a “credit building” product. For example, Equifax has touted a study of consumers with a BNPL tradeline in their credit file, where a majority of consumers in its study experienced an average FICO score increase of 13 points when the BNPL tradeline showed on-time payments.²² However, this increase was due in part to consumers choosing to have the BNPL account reported as a revolving account, like a credit card. Unless BNPL accounts are treated as open-end credit, the credit building potential of BNPL is significantly limited given how frequently opening short-term loans (even if they are paid on-time) has a negative effect on credit scores, as opposed to the positive effects associated with managing timely payments on a revolving, open-end credit account. This is another reason BNPL products should be treated as credit cards. There are also significant risks from BNPL to consumer’s credit scores if they fail to make payments on time. If it is regarded and reported as individual loans and not cumulatively as revolving credit, BNPL has the potential to do damage to credit reports. **The CFPB should conduct research on the realistic impact of BNPL on credit scores, develop educational materials about the actual benefits versus risks, and watch out for deceptive claims about credit building aspects.**

BNPL credit can result in unexpected debt collection impacts. Consumer understanding of the terms of BNPL credit varies widely, with many consumers not viewing BNPL as debt.²³ As a result, consumers may not fully understand the consequences of failing to repay, including the possible involvement of debt collectors. Even small BNPL debts can end up being placed with third-party debt collectors for collection, or sold to debt buyers. Since BNPL lenders typically don’t obtain social security numbers from consumers, they cannot pass on this information to collectors– which can make it harder for collectors to confirm that they are collecting from the right person. Correct identifying information is vital when debt collectors and/or debt buyers may attempt to collect accounts for years, especially given that contact information such as phone numbers and email addresses change over time. The CFPB should monitor the treatment of delinquent and charged-off BNPL debt and look out for unfair, deceptive or abusive debt collection practices.

Given the explosion of product offerings and consumer usage, it is imperative that the CFPB supervise BNPL providers to ensure that they are not engaging in unfair, deceptive, or abusive acts or practices.

Financial Inclusion

²¹ Williams, BNPL users (Mar.,2022)

²² Equifax, “Market Pulse: Buy Now, Pay Later Credit Score Impact Analysis - Webinar Slides,” (Feb. 10, 2022) <https://www.equifax.com/resource/-/asset/presentation/market-pulse-buy-now-pay-later-credit-score-impact-analysis-webinar-slides/>.

²³U.K. Financial Conduct Authority, Woolard Review (Feb. 2021).

We are particularly concerned about products that claim to promote financial inclusion but, in reality, may do quite the opposite. Without meaningful, holistic underwriting, affordable repayment options, and price transparency, these products may do more to exacerbate financial exclusion rather than promote financial inclusion.

Many of these products use promises of no credit check, which may entice consumers with thin or damaged credit histories who do not realize that these products are credit. For those consumers with blemished credit histories or who are struggling to make ends meet, they may not have the capacity to take on more debt. These consumers, especially low- and moderate-income workers, those with limited English proficiency (LEP), and people of color, have long been targeted by predatory practices, excluded from traditional financial systems, and struggled to build wealth and financial security. Failing to properly underwrite loans and transparently disclose prices will simply lead to more unaffordable and unsustainable debt for consumers.

Recommendations

BNPL products have largely evaded oversight by federal and state regulators. Although these products could have a place in meeting consumer needs if they operate as promised, they need to be covered by basic consumer protections, as these products still pose risks to consumers.

We recommend that the Bureau:

- Apply credit card protections of the Truth in Lending Act (TILA), including the provisions of the Credit Card Accountability Responsibility and Disclosure Act. BNPL providers issue devices that are “charge cards,” which do not need finance charges or more than four installment payments to be covered by TILA. Applying credit card rules to BNPL credit would provide consumers with basic protections, such as dispute and chargeback rights, cost transparency, uniform disclosures and statements, reasonable penalty fees, and underwriting for a consumer’s ability to repay.
- Issue a larger participant rule to bring the BNPL market (along with other installment loan markets) within the CFPB’s supervision.
- Prevent or take action against unfair, deceptive or abusive acts and practices (UDAAPs) and ensure compliance with fair lending laws.
- Enforce the Electronic Fund Transfer Act’s ban on compulsory repayment of credit by preauthorized electronic fund transfer.
- Conduct research on the impact of the BNPL market on consumers and on their credit reports.

Thank you for considering this request.

Yours very truly,

National Organizations

20/20 Vision DC

Accountable.US
Americans for Financial Reform Education Fund
Association for Financial Counseling & Planning Education
Bend the Arc: Jewish Action
Better Markets
CAARMA: Consumer Advocates Against Reverse Mortgage Abuse
Center for Digital Democracy
Center for Economic Justice
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Consumer Reports
Consumers for Auto Reliability and Safety
Credit Builders Alliance
Local Initiatives Support Corporation (LISC)
Main Street Alliance
National Association for Latino Community Asset Builders
National Association of Consumer Advocates
National Center for Law and Economic Justice
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
Public Citizen
Public Good Law Center
Revolving Door Project
Student Borrower Protection Center
Student Debt Crisis Center (SDCC)
U.S. PIRG
Woodstock Institute

State and Local Organizations

Alaska PIRG
Arizona PIRG Education Fund
Center for Economic Integrity
Arkansans Against Abusive Payday Lending
California Reinvestment Coalition
CALPIRG (California Public Interest Research Group)
CAMEO - California Assoc for Micro Enterprise Opportunity
Consumer Federation of California
East Bay Community Law Center
Fresno Building Healthy Communities
Housing and Economic Rights Advocates
Public Counsel
Bell Policy Center
Connecticut Legal Services, Inc.
Delaware Community Reinvestment Action Council, Inc.

Tzedek DC
Florida Consumer Action Network
Georgia Watch
Illinois People's Action
Illinois PIRG
Legal Action Chicago
Citizens Action Coalition of IN
Indiana Community Action Poverty Institute
Kentucky Equal Justice Center
Louisiana Budget Project
CASH Campaign of Maryland
Maryland Consumer Rights Coalition
Public Justice Center
Greater Boston Legal Services
New Jersey Citizen Action
New Mexico Center in Law & Poverty
Prosperity Works
Empire Justice Center
New Yorkers for Responsible Lending
Asheville Area Habitat for Humanity
NC Coalition for Responsible Lending
North Carolina Justice Center
The Collaborative
VOICE OKC (Voices Organized In Civic Engagement)
Columbia Consumer Education Council
SC Appleseed Legal Justice Center
RAISE Texas
Texas Appleseed
Legal Aid Justice Center
Virginia Citizens Consumer Council
Virginia Organizing
Virginia Poverty Law Center
Mountain State Justice