Consumer and Worker Protection

**Samuel A.A. Levine**
Commissioner

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**New York, NY 10004**

**nyc.gov/dcwp**

Acting Superintendent Kaitlin Asrow
New York State Department of Financial Services

*Via Electronic Submission*

*Re: Buy-Now-Pay-Later (BNPL) Lenders, 3 NYCRR 423*

Dear Acting Superintendent Asrow:

The City of New York (the City) appreciates the opportunity to comment on the Department of Financial Services' (DFS) proposed regulations regarding Buy Now Pay Later (BNPL) businesses. The New York City Department of Consumer and Worker Protection (DCWP or the Department), in particular, shares your goal of rooting out unfair, deceptive, or abusive acts or practices. DCWP is responsible for enforcing the New York City Consumer Protection Law (CPL), which prohibits deceptive and unconscionable trade practices, enforcing industry-specific laws and rules to protect consumers, and monitoring for new risks to consumers. DCWP's mission is to protect and enhance the daily economic lives of New Yorkers to create thriving communities. Through its work and community outreach, DCWP empowers consumers and working families by providing the tools and resources they need to be educated consumers and achieve financial health and work-life balance. DCWP also provides essential services such as free tax preparation for individuals and families, as well as for self-employed workers and small businesses, and one-on-one financial counseling for individuals to ensure New Yorkers keep more of what they earn and can plan for their futures. DCWP is committed to making sure New York City is a fairer, more affordable place to live.

The Department was supportive of S. 3008-C of 2025, the bill passed by the New York State Legislature that added Article 14-B to the Banking Law, officially giving DFS regulatory authority over the BNPL lending industry early last year. The Department is heartened to see DFS now proposing these robust regulations to ensure that BNPL providers are not exploiting New Yorkers. It is clear that DFS put great thought into the drafting of these proposed regulations, and DCWP is pleased to be able to provide support and additional recommendations on the rules as outlined below. The Department notes that the proposed regulations provide that, once finalized and published, the regulations will take effect only after 180 days. Because BNPL products continue to pose the threat of severe financial harm to consumers in New York, DCWP urges DFS to consider reducing the time between publication of the Notice of Adoption and effective date of the regulations to 60 or 90 days.

## I. The Problem: BNPL Are Used in New York City By Those Already in Financially Precarious Positions

Residents of New York City (NYC), like those struggling with affordability nationwide, have turned to BNPL products with more regularity, using these loans to pay for everyday necessities such as groceries or medical care. Recent reporting highlights how BNPL lenders are now marketing these loans for basic household expenses, such as mortgage or rent payments and utility bills.[1] BNPL loans threaten to disproportionately harm consumers who are especially vulnerable to debt accumulation. While BNPL products offer consumers alternatives to traditional options for accessing credit, especially for those consumers who may be underserved by institutional financial services, these products can place vulnerable consumers in further financial precarity without any regulatory backstops. The ubiquity of these loans as a form of payment for virtually every kind of transaction has only exacerbated this problem.

Additionally, many BNPL borrowers are rushed to enroll in these products with just a few clicks, and without fully understanding the terms and conditions, which can lead to devastating financial consequences. As recently reported by The Century Foundation, during this period of widespread financial insecurity, younger Americans, people of color and women are disproportionately suffering economically, and increasingly forced to make difficult tradeoffs when trying to pay bills.[2] According to a 2025 Lending Tree survey of 2,000 U.S. consumers, more BNPL users report being late or unable to make payments: 41% compared to 34% in 2024. Also, even more users are using BNPL products to buy daily essentials such as groceries, rather than only "big ticket" purchases.[3] Most of these BNPL users are already economically vulnerable and in credit card debt.[4] Exacerbating the potential harm of these loans' use, BNPL providers are not required to report payment information to credit bureaus. Without standardized credit reporting requirements, BNPL loans may negatively impact consumers' credit for missed payments, while also depriving consumers of the potential benefits to their credit scores from on-time payments when lenders choose not to report.[5]

An analysis of data collected by DCWP confirmed that the concerns related to increased BNPL use—particularly by consumers who already carry financial burdens—are as prevalent in New York City as they are nationally. DCWP reviewed the data of NYC residents who utilize DCWP financial counseling

[1] *See* Cowley, Stacy, "'Buy Now, Pay Late' Lenders Pitch Loans for Needs Like Electricity and Rent", The New York Times (Aug. 17, 2026), available at: https://www.nytimes.com/2026/08/17/business/buy-now-pay-later.html.
[2] "Survey: The Affordability Crisis Is here, and It's Hitting the Working Class the Hardest", available at https://tcf.org/content/report/survey-the-affordability-crisis-is-here-and-its-hitting-the-working-class-the-hardest/.
[3] https://www.lendingtree.com/personal/buy-now-pay-later-loan-statistics/
[4] https://tcf.org/content/report/interest-nation-the-state-of-americas-credit-card-debt-crisis/ "Interest Nation: The State of America's Credit Card Debt Crisis." The Century Foundation, March 17, 2026. https://tcf.org/content/report/interest-nation-the-state-of-americas-credit-card-debt-crisis/.
[5] "Buy Now, Pay Later and Credit Reporting". Consumer Financial Protection Bureau. June 15, 2022. https://www.consumerfinance.gov/about-us/blog/by-now-pay-later-and-credit-reporting/

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services offered at the over 45 Financial Empowerment Centers ("Centers") between June 2023 and August 2026, and found that:

- BNPL borrowers are younger than non-BNPL borrowers, with the majority between the ages of 18 and 34;
- Most BNPL borrowers are female (71%);
- BNPL consumers in NYC are predominantly Black or African American, or Hispanic/Latino;[6]
- Most BNPL borrowers have an annual income less than $57,000 (75%), while nearly one-third are unemployed (30%);
- The majority of BNPL borrowers live in financially vulnerable[7] neighborhoods as compared to non-BNPL clients of the Centers;
- Households in the Bronx account for 48% of BNPL consumers in the city;
- Those consumers who use BNPL have significantly less savings than those who do not use BNPL—$600 median savings for BNPL consumers versus $2,800 median savings for non-BNPL consumers;
- The median debt balance owed by those utilizing BNPL loans is higher than those who have not used BNPL products – about $11,690, as compared to those consumers who carry debt but have not used BNPL, who owe about $8,519.

We remain concerned about the serious financial risk of harm that BNPL loans continue to pose to our most vulnerable residents. In particular, the Department believes that BNPL loans exacerbate the already precarious challenges NYC residents face due to "debt stacking," when a consumer carries multiple overlapping loans of various sizes. BNPL credit deceives consumers by being "invisible debt" since no hard credit check is required when users sign up, further masking the nature of these loans or credit products and increasing the likelihood of missed or late payments.

Nearly one in four Americans said they used a BNPL service in the past year, according to a July study from the Financial Industry Regulatory Authority ("FINRA"). Those who say they have used BNPL are more likely to have reached delinquencies on other accounts, which in turn incurs more unanticipated fees.[8] Debt-stressed credit card holders are using more of their available credit, with median utilization rates increasing from 63.8% in 2018 to 70.7% by the end of 2025, according to a 2026 report from The Century Foundation.[9] Consumers running out of credit may turn to alternatives like BNPL loans to pay for expenses,

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[6] The data indicates that 86% of Center clients using BNPL identify as Black or Latino, whereas those Center clients who did not use BNPL during the same period were still majority identifying as Black or Latino, but about 9 percentage points lower (77%).

[7] Financially vulnerable neighborhoods were identified using the NYC Department of Consumer and Worker Protection's Neighborhood Financial Health Index (NFHI) tool that that ranks and measures neighborhoods within New York City using 35 indicators under five vital financial health goals: https://www.nyc.gov/assets/dca/NFHI/NFHI/index.html. The most financially vulnerable neighborhoods are the bottom one-third of all areas with the lowest overall score.

[8] "Financial Capability in the United States" (2025), available at: https://www.finrafoundation.org/sites/finrafoundation/files/2025-07/NFCS-Report-Sixth-Edition-July-2025.pdf.

[9] "Interest Nation: The State of America's Credit Card Debt Crisis." The Century Foundation, March 17, 2026, available at: https://tcf.org/content/report/interest-nation-the-state-of-americas-credit-card-debt-crisis/.

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potentially incurring more debt as they struggle to pay down existing credit card debt. Troublingly, about 60% of BNPL users nationwide have had multiple BNPL loans at the same time,[10] increasing the probability that they will default on one or more of these and incur additional fees beyond whatever they had originally budgeted or planned to pay. Furthermore, once a consumer is having difficulty paying one line of credit, it is more likely they will take out another loan to assist them in paying.[11] The Department remains concerned about these trends and is committed to working together with DFS to ensure that these regulations are as effective in protecting consumers in New York as possible.

## II. Recommendations

### *A. DFS Should Ensure that its Definitions of BNPL Loans and Lenders Include All Forms of BNPL Products*

DCWP supports DFS's proposed definitions but recommends that Section 423.1 clarify that the regulations also apply to similar products that are marketed to consumers as specialized deferred interest products for particular services that are often high cost but necessary, such as medical treatments and housing. The Department has noted the recent popularity of Rent-Now-Pay-Later ("RNPL") and Care-Now-Pay-Later ("CNPL") products with great concern. In DFS's proposed regulations, a BNPL loan is defined as "closed-end credit provided to a consumer in connection with such consumer's particular purchase of goods and/or services." DCWP strongly recommends that DFS amend its definitions and/or incorporate into its definitions an explicit statement that BNPL products marketed for health care payments or to use for rent or mortgage payments are included and covered by these regulations.

These targeted products can create the same complications for consumers as other BNPL products but are presented as options to consumers in especially vulnerable circumstances, making the potential consequences of these loans especially devastating. These products are marketed by BNPL lenders, as well as by health care providers and landlords, who claim that these loans can ease the housing affordability or healthcare accessibility crisis. However, in both cases, these products fail to address the underlying problems and result only in consumers facing new and compounding risks.[12] This includes CNPL products consumers are using to receive a variety of care, including dental care—both emergency and preventative,[13] obesity

[10] https://www.investopedia.com/the-hidden-dangers-of-buy-now-pay-later-why-nearly-1-in-4-americans-are-at-risk-11789074

[11] "In [a 2025] Groundwork-Protect Borrowers survey of 1,202 likely voters, nearly 1 in 3 (29%) report taking out a so-called Buy Now, Pay Later loan (BNPL) in the past year to pay for a range of basic needs and monthly expenses. Alarmingly, this poll shows for the first time that Americans are using these risky new forms of credit to pay other bills and keep up with other debts—among BNPL users, 1 in 4 (24%) report borrowing to cover rent, 1 in 3 (36%) report borrowing to cover a payment on another debt, and 1 in 3 (36%) report borrowing to cover the cost of medical or dental care." American Families Are Trapped in a Cycle of Debt, More Rely on Credit to Cover Rent, Utility Bills, Basic Necessities - Protect Borrowers.

[12] *See, e.g.*, Protect Borrowers et al., "Rent Now, Pain Later" (2026) *available at* https://protectborrowers.org/wp-content/uploads/2026/02/Rent-Now-Pain-Later.pdf, which identifies the specific risks to consumers from using RNPL loans at pp. 21-27.

[13] DCWP recently sued two dental offices for their predatory conduct in enrolling patients into CNPL lending products without informed consent: https://www.nytimes.com/2026/07/29/us/dentists-canarsie-brooklyn-insurance-lawsuit.html?smid=url-share.

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treatments, diabetes treatments, and dermatological services. Examples of CNPL products include CareCredit, Cherry, and Affirm.[14] Similarly, RNPL products are gaining popularity with consumers looking for ways to pay their rent at the same time as other bills become due. These RNPL loans are offered as short-term rental support—but ultimately are high-cost loans. Examples of these products include the rental platform RealPage (which recently acquired Livble), the credit product Flex, the credit product Bilt, Zip and Affirm.[15]

The Department notes that problematic CNPL medical financing products are not all closed-end credit products but also include open-ended revolving financing such as CareCredit and Alphaeon Credit. It is complicated, however, since even these open-ended revolving credit lines are marketed to consumers as an "easy" option to afford an expensive out of pocket payment for a treatment that may not be covered by insurance. While consumers specifically enroll for a dollar amount necessary to pay for the required treatment or service, the credit line created does not simply terminate after all repayment obligations are met. In this way, these CNPL products may appear to consumers as closed-end loan products at the outset, but are actually open-ended revolving accounts, which can ultimately impact consumers' credit.

Regardless, all of these CNPL products are marketed as alternatives for consumers to afford any variety of healthcare needs that may not be covered by insurance. Another way DFS's definition of BNPL Lender may be interpreted to exclude CNPL products is because not all CNPL products are provided in connection with a "particular purchase" of medical services, but instead offered as a manner to pay for some or all of a *series of treatments*, an out-of-pocket portion or obligation for treatments or goods, or a category of services generally. DCWP raises these issues related to the evolving market of healthcare financing products due to our concern that CNPL providers will use gamesmanship about the nature of the credit being extended to avoid regulation by DFS at a time where they similarly face little to no regulatory oversight by the federal government.

The Department believes that CNPL and RNPL products do meet the statutory definitions outlined in the Banking Law[16], and thus exhorts DFS to explicitly include both kinds of products in its definition of BNPL and BNPL lenders to make clear beyond a doubt that these products are too covered by the regulations.[17]

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[14] *See* Health and Wellness Credit Card – CareCredit; Home - Cherry Payment Plans (withcherry.com); "Focus: Buy now, pay later tender Affirm pushes into elective medical procedures" Reuters (2024) available at: https://www.reuters.com/technology/buy-now-pay-later-lender-affirm-pushes-into-elective-medical-procedures-2024-04-23/.
[15] *See* Protect Borrowers et al., "Rent Now, Pain Later" (2026).
[16] *See* NYS Banking Law § 736(3)-(4) (2026) (Defining a BNPL loan as closed-end credit provided to a consumer in connection with the consumer's particular purchase of goods and/or services…and a BNPL lender as a person who offers BNPL loans in this state, respectively.)
[17] DFS's proposed definition of a BNPL lender provides that a "person shall not be considered a BNPL lender on the basis of isolated, incidental or occasional transactions which otherwise meet the definitions of this section." DCWP has concerns that this carveout provides a potential loophole for RNPL and CNPL lenders who market their loans to consumers as coverage for one-off transactions. DCWP respectfully requests that DFS clarify the purpose of the exclusion to ensure that RNPL and CNPL loans are covered.

*B. Expand Protections Against Deceptive Advertising and Marketing*

DCWP supports the provisions in section 423.8 protecting consumers from deceptive marketing and advertising. DCWP recommends broadening section 423.8 to affirmatively require the disclosure of all material exclusions, reservations, limitations, modifications or conditions in any offer or advertisement—including where a BNPL product is offered to consumers at the point of sale or at check out. Critical material conditions that should be disclosed and acknowledged by the consumer prior to enrollment include, but are not limited to, (i) any deferred interest accrual whereby the interest accruing during a promotional period becomes due at the expiration of that period, irrespective of payments made; and (ii) late fees and late payment penalties.

Such an approach would be consistent with the New York City Consumer Protection Law, which defines transactions whose terms require consumers to waive legal rights as unconscionable,[18] and with the Rules of the City of New York, which require all sellers of consumer goods or services to clearly and conspicuously include fulsome affirmative disclosures of any material conditions or limitations.[19]

*C. Document Retention Requirements for Advertising and Marketing*

DCWP also supports the provision in section 423.8(b) requiring BNPL lenders to maintain advertising and marketing materials, including web captures of material changes to internet advertising and marketing. These materials are critical to understanding the representations that BNPL lenders have made to consumers, and whether consumers have been deceived. As currently written, these materials must be maintained "for review and examination by the superintendent." There is no clear requirement to maintain records showing the duration that each advertising or marketing material was published or the audience to whom it was presented.

DCWP recommends broadening these requirements to assist City and State regulators in their respective investigations of deceptive practices. DCWP specifically recommends that these materials be maintained by BNPL lenders "for review and examination by the superintendent *and other government bodies of competent jurisdiction*" and that BNPL lenders be required to maintain records showing the duration that each covered advertising or marketing material was published and the forum in which it was published.

*D. Pre- and Post-Transaction Disclosures*

The Department reviewed complaints submitted by NYC consumers to the CFPB regarding problems with BNPL providers in 2025, and identified the top issue consumers complained about to be related to non-existent dispute resolution processes, and opaque and confusing refund policies. For this reason, DCWP supports requiring BNPL lenders to provide clear and conspicuous disclosures to consumers

[18] *See* New York City Administrative Code § 20-701(b).

[19] *See* 6 RCNY § 5-09 ("Sellers offering consumer goods or services in print advertising and promotional literature must disclose clearly and conspicuously all material exclusions, reservations, limitations, modifications or conditions.").

in an unavoidable manner in advance of permitting any transaction be consummated, as proposed in section 423.12(a)(2).

However, because these disclosures will likely be voluminous and technical, the Department is concerned that this will simply be provided to consumers in fine print, which most consumers will scroll through to simply get to the next page of the transaction. DCWP supports the requirement in section 423.12(a)(3), then, that BNPL lenders mail or deliver a post-transaction confirmation that includes all of the pre-transaction disclosures. This will provide additional protections to consumers and ensure that they are informed of their rights both before a transaction, and if and when they attempt to submit a dispute to or obtain a refund from a BNPL lender.

DCWP further proposes, however, that DFS include a requirement that consumers receive a copy of all of the disclosures by email and, where the BNPL product is used at a point of sale in person, in hard copy, as well as in the post-transaction confirmation. As DCWP's program data, *see supra* Section I, illustrates, the consumers who are increasingly taking on BNPL indebtedness tend to be younger and less experienced consumers, who already experience other financial stressors, and so providing reminders—especially in hard copy or in their inboxes—of the obligations they undertook could be helpful in both reducing delinquencies or late payments, as well as disincentivizing the practice of enrolling in several BNPL loans with overlapping and compounding obligations. Finally, the Department notes that disclosure requirements alone are largely insufficient to truly protect consumers from unfair and abusive practices. DCWP encourages DFS to also use its authority under 12 U.S. Code § 5552 to ensure that BNPL lenders are not engaging in abusive and unfair conduct despite providing these disclosures; essentially, the Department urges DFS to ensure that the disclosure requirements do not become a safe harbor for BNPL lenders to continue to engage in abusive practices.

### *E. Refunds and Credits*

Because of the many problems NYC consumers report having when attempting to obtain a refund or credit for an item or service that either was never delivered, was damaged, or which the consumer was otherwise unable to be used as had been offered, DCWP commends DFS's proposed section 423.12(c) and how it attempts to prescribe the obligations of the BNPL lender in these circumstances. However, DCWP's concerns remain, to the extent that subsection (1) appears to condition all of the BNPL's obligations on a "retail seller's agreement to refund a consumer" after the BNPL lender has made "reasonable efforts" to obtain that agreement from the retail seller. The Department worries that this is too large of a loophole, with far too much ambiguity, that will result in BNPL lenders simply continuing to engage in their current practice of blaming the retail vendor without meaningfully utilizing its position and leverage to assist the consumer in getting their money back. DCWP proposes that DFS require BNPL lenders include in any agreement with retail vendors such retail vendors' obligations to respond to both BNPL refund/return inquiries, as well as those by consumers who utilized BNPL to purchase a good or service from that vendor. The Department further suggests that DFS include a recordkeeping **obligation** to demonstrate that the BNPL lender made "reasonable efforts" to obtain a vendor's agreement to refund a consumer.

*F. Dispute Resolution Notices*

Section 423.12(d)(2) defines a billing error notice as "an electronic, oral, or written notice from a consumer… ." However, (d)(2)(i) only requires a BNPL lender to provide consumers with a telephone number or address for the purpose of filing a billing error notice. To fully capture the various methods available for billing error notice delivery, DCWP recommends that this section include all available delivery methods, and require BNPL lenders to provide an email and webform address for consumers to file billing error notices. The Department further urges DFS to prohibit BNPL providers from solely utilizing automized or AI customer assistance in resolving billing error disputes and/or refund requests, and to ensure borrowers can get timely responses to disputes. Finally, to fully capture and review billing error notices filed orally, DCWP recommends requiring BNPL lenders to record and maintain records of all complaint calls for no less than three years for inspection.[20]

DCWP also notes that Section 423.12(d)(2)(i) includes an inaccurate cross-reference. The current cross reference reads **(a)(3)(v)(g).** This section should instead read "BNPL lenders must provide a phone number and address consumers may use to send billing error notices pursuant to **(a)(4)(v)(g)**."

## III. Enforcement

As expressed throughout this comment, the Department fully supports DFS's enforcement of the Banking Law and these rules as to BNPL lenders. However, DFS must ensure that it robustly examines BNPL lenders as actively is it does the other lenders whom DFS regulates to ensure that BNPL consumers are fully protected. As previously noted, DCWP urges DFS to use its full authority under section 1042 of the Consumer Financial Protection Act ("CFPA") to crack down on abusive, deceptive and unfair acts and practices by BNPL providers. DFS pioneered state regulators' use of the CFPA over 10 years ago,[21] and can do so again to ensure BNPL lenders do not take advantage of New York consumers.

Finally, to ensure the most expansive protection of consumers against predatory practices, DCWP urges New York State to explicitly grant parallel enforcement authority to DCWP of the proposed BNPL regulations and NYS Banking Law Article 14-B. Dual enforcement within New York state is a common practice. *See*, *e.g.*, Public Health Law Article 13-F (tobacco and vapor product enforcement);[22] NYS GBL

[20] Additionally, DCWP recommends that the records requirements discussed here and in the previous section concerning refunds and credits include language allowing access to such records by other governments of competent jurisdiction. This will ensure State and City regulators can robustly investigate consumer harm.

[21] *See* DFS Press Release (Dec. 19, 2024), available at: https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1412191.

[22] *See* N.Y. Pub. Health L § 1399-CC (2026).

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Article 11 (employment agencies);[23] NYS GBL Article 5 (collateral loan brokers);[24] NYS AGM Article 16 (weights and measures and petroleum).[25]

A joint New York State and City enforcement partnership increases the likelihood of consistent enforcement of consumer protections across these products for all New Yorkers, and will ensure DFS and DCWP continue their records of strong enforcement against predatory conduct. The close collaboration between New York City and New York State has produced beneficial outcomes for New Yorkers, and DCWP expects this established level of sustained, quality enforcement to continue.

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DCWP recognizes the severe risk of harm posed by BNPL products and looks forward to working alongside DFS to ensure consumers are sufficiently protected.

Respectfully submitted,

Samuel A.A. Levine

[23] *See* N.Y. Gen. Bus. Law § 170 *et. seq.* (2026).
[24] *See* N.Y. Gen. Bus. Law § 40 *et. seq.* (2026).
[25] *See* N.Y. Agric. & Mkts. Law § 176 *et. seq.* (2026).