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Commissioner

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The Consumer Financial Protection Bureau
Via Electronic Submission

Docket No.: CFPB-2024-0017 [87 FR 5801]: Request for Comment for Truth in Lending (Regulation Z): Use of Digital User Accounts to Access Buy Now, Pay Later Loans

August 31, 2024

Dear Director Chopra,

The City of New York (“the City”) appreciates the opportunity to respond to the Consumer Financial Protection Bureau’s (“CFPB”) Request for Comment (“RFC”) regarding an interpretative rule regulating Buy Now, Pay Later loans under Regulation Z (Docket No. CFPB-2024-0017). The New York City Department of Consumer and Worker Protection (“DCWP”), shares CFPB’s goal of rooting out unfair, deceptive, or abusive acts or practices by 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 commends the CFPB for its commonsense reforms that increase transparency and protections for consumers using Buy Now, Pay Later (BNPL) products. Recently, DCWP has researched and gathered data concerning New Yorkers’ use of BNPL products, which we believe are more accurately categorized as loans. While we acknowledge that these products may offer convenient access to credit, they can lead to negative financial health impacts, particularly for vulnerable consumers. Nationally, BNPL borrowers on average have more debt and fewer liquid assets, raising concerns over debt accumulation among financially vulnerable

consumers.¹ A lack of uniform consumer protections and disclosure requirements for BNPL lenders contributes to confusion and financial strain on consumers, due to limited rights and transparency surrounding loan terms.

Recognizing the rise in BNPL product use and thus increased debt accumulation among New Yorkers, DCWP has worked to educate consumers on potential risks and best practices to enable more informed financial decisions and loan management, including a “Buy Now, Pay Later Tips” resource on the City’s website.² DCWP has monitored consumer complaints for potentially deceptive and misleading advertisements by BNPL products that entice consumers to use these loans without knowing the potential repercussions. The proposed Regulation Z will likely address many of the concerns that DCWP has identified.

DCWP’s Financial Empowerment Centers (Centers) offer additional perspectives on the rise and dangers of BNPL use. The Centers provide free, one-on-one professional financial counseling to help New Yorkers manage their money, establish or improve their credit, develop a debt reduction strategy, and more. The Centers have served more than 73,000 clients, helping them save more than \$11 million and reduce debt by \$100 million. In the last two years since the Centers started tracking BNPL use, 4% of clients have reported owing amounts from BNPL use ranging from under \$100 to several thousands of dollars.

1. Buy Now, Pay Later’s Impact on Vulnerable Consumers’ Financial Health

BNPL loans threaten to disproportionately harm consumers who are especially vulnerable to debt accumulation and often hidden fees. DCWP recognizes that 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. BNPL borrowers are more likely to have lower credit scores, fewer liquid assets, and more unpaid credit card debt than non-BNPL users.³ Consumers who have other types of debt may use BNPL loans for purchases that exceed their liquid assets, accruing even greater debt at unmanageable levels. BNPL purchases are also lower priced and more frequent, for financially vulnerable consumers, indicating that these vulnerable consumers may be using BNPL for everyday items.⁴

The impact of debt stacking on consumers is profound -- this prevents consumers from paying down other lines of credit, building liquid assets, and establishing long-term savings. DCWP has observed BNPL debt accumulation’s impact among clients of its Centers, with one client informing a financial counselor that they were struggling to keep up with their \$500 monthly BNPL payments, preventing the client from building emergency savings.

Because consumers often do not realize that by using BNPL products, they are essentially taking out a loan, BNPL loans can be difficult for consumers to manage, increasing the likelihood of missed or late payments. Consumers can simultaneously obtain loans from different providers, of varying payment amounts and due dates, which leads to missed payments and late fees. Among BNPL customers, 10.5% were charged at least

¹ Stavins, Joanna. 2024. “Buy Now, Pay Later: Who Uses It and Why.” Federal Reserve Bank of Boston Current Policy Perspectives No. 24-3.

² <https://www.nyc.gov/site/dca/consumers/Buy-Now-Pay-Later-Tips.page>

³ Stavins, Joanna. 2024. “Buy Now, Pay Later: Who Uses It and Why.” Federal Reserve Bank of Boston Current Policy Perspectives No. 24-3.

⁴ Felix Aidala, Daniel Mangrum, and Wilbert van der Klaauw, “How and Why Do Consumers Use ‘Buy Now, Pay Later’?,” Federal Reserve Bank of New York Liberty Street Economics, February 14, 2024, <https://libertystreeteconomics.newyorkfed.org/2024/02/how-and-why-do-consumers-use-buy-now-pay-later/>.

one late fee in 2021, an increase from 7.8% in 2020.⁵ Research has found that BNPL users incur more overdraft charges and credit card late fees, and higher credit card interest, than non-BNPL users.⁶ With fewer liquid assets to cover payments, additional fees, and interest, BNPL loans can further harm vulnerable consumers' financial health.

Exacerbating the potential harm of their use, BNPL providers are not required to report payment information to credit bureaus. Without credit reporting requirements, BNPL loans may negatively impact consumers' credit scores through missed payments and increased credit card debt, all while depriving consumers of the potential benefits that regular, on-time payments could provide to their credit scores. BNPL's impact is also disproportionately felt by communities of color and women. As the CFPB notes, Black, Latino, and female consumers are more likely to use BNPL products, raising equity concerns with existing racial and gender wealth gaps. These populations are already more likely to be in financially precarious positions, earn less than their white male counterparts and face greater likelihood of subprime credit scores, debt in collections, and high-cost nonbank borrowing rates at least 1.5 times higher than those in majority-white communities.⁷

DCWP's Centers' client data also underscores these trends:

- The majority of BNPL borrowers are females (72%)⁸;
- BNPL borrowers are predominantly Black or Hispanic/Latino/a (~ 85%)⁹;
- BNPL borrowers are, on average, younger than non-BNPL borrowers (35 years v. 42 years), and among clients who use BNPL, 45% fall between the ages of 25-34; and
- The average reported annual income among BNPL borrowers is \$29,600; and 32% of these borrowers reported less than \$22,000 in annual income.

2. Proposed Regulations Will Better Protect Consumers Considering Utilizing Buy Now, Pay Later Loans

DCWP agrees with the CFPB that regulating BNPL lenders as credit card providers will ensure that they grant consumers important transparency and protections, especially by requiring disclosures, and guaranteeing the ability to dispute billing. Requiring BNPL lenders to provide disclosures, including billing statements and the cost of credit, will allow consumers to understand that they are in fact obtaining a loan, and inform them about the risks, and allow them to better manage their BNPL loan obligations. Disclosures can help consumers better understand the terms of a BNPL loan, including the pricing structure and the possibility of late fees, enabling them to make more informed financial decisions. Furthermore, requiring the provision of billing statements can help consumers better manage simultaneous loan obligations and due dates, reducing the risk of missed or late payments, and compounding interest.

DCWP also supports requiring BNPL lenders to clarify billing dispute processes and making them mandatory with a goal toward providing consumers rights when they identify possible billing errors or have

⁵ Rep. *Buy Now, Pay Later: Market Trends and Consumer Impacts*, 2022.

https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf.

⁶ deHaan, Ed and Kim, Jungbae and Lourie, Ben and Zhu, Chenqi, *Buy Now Pay (Pain?) Later* (August 28, 2023). Management Science, Forthcoming. Available at SSRN: <https://ssrn.com/abstract=4230633> or <http://dx.doi.org/10.2139/ssrn.4230633>

⁷ "Credit Health during the COVID-19 Pandemic," Urban Institute, March 8, 2022, <https://apps.urban.org/features/credit-health-during-pandemic/>. Accessed June 10, 2024.

⁸ It should be noted that BNPL consumers and non-BNPL consumers within the Financial Empowerment Centers are similar, by proportions, across gender identities.

⁹ Same as previous footnote, BNPL consumers and non-BNPL consumers within the Financial Empowerment Centers are similar, by proportions, across race/ethnicity identities.

disagreements about BNPL purchases. The current lack of consistent billing dispute rules can cause confusion and financial stress for consumers. As the CFPB notes in the “Buy Now, Pay Later: Market Trends and Consumer Impacts” report, dispute resolution is the most common complaint category in the CFPB Consumer Complaint Database.¹⁰ Currently, BNPL providers may require consumers to contact the merchant directly, leading to potential confusion and unnecessary hurdles for borrowers. Further, consumers may also be required to continue making payments throughout the billing dispute, causing further financial strain.

Under Regulation Z, BNPL lenders will be required to investigate disputes within a limited time period, and BNPL borrowers will have the right to withhold payment until the issue is resolved. These rights are especially important for consumers who have limited liquid assets. Continuing to be charged for BNPL purchases, especially throughout a prolonged dispute process, can make consumers vulnerable to accumulating more debt if they are unable to cover the payments.

Finally, and importantly, DCWP believes that the new right for BNPL consumers to demand a refund from lenders when they return a product purchased with a loan is critical. Many consumer complaints about BNPL arise out of the inability to obtain refunds for returns. DCWP has received at least three complaints over the past year from consumers about the difficulties of obtaining a refund for items bought using a BNPL product.

All of these new requirements that proposed Regulation Z will impose on BNPL products will provide important protections and transparency for all BNPL consumers, particularly the most financially vulnerable. Additional recommendations DCWP proposes include:

- Beyond BNPL loans consumers can utilize via apps or through online purchases, DCWP also has grave concerns about the proliferation of more targeted BNPL products. These include medical service payment products or “Care Now, Pay Later” (“CNPL”) products utilized by consumers in need of a variety of care, ranging from dental care to obesity and diabetes treatments, to dermatological services. Examples of these products include CareCredit[®] cards,¹¹ Cherry,¹² and Affirm’s newly rolled out medical loans.¹³ DCWP urges the CFPB to specify that Regulation Z’s new requirements will also apply to CNPL products. These products are attractive to consumers for the same reason that BNPL loans are, and the risks are the same. For example, CareCredit[®] advertises promotions that start off with 0% Annual Percentage Rate (“APR”) for a certain period (usually 6, 12 or 18 months). However, it is not clear to consumers that the balance will often not be paid off until after the promotional period expires and the APR raises if they only make minimum payments. Notably, the standard APR for CareCredit[®] after the promotional period expires is 29.99% – higher than that of even the top rewards-earning credit cards.¹⁴ The disclosures required by Regulation Z would mark a significant additional protection for consumers who may have otherwise opted to use a CNPL product without the liquid assets to pay off the loan.

¹⁰ Rep. *Buy Now, Pay Later: Market Trends and Consumer Impacts*, 2022.
https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf.

¹¹ [Health and Wellness Credit Card - CareCredit](#)

¹² [Home - Cherry Payment Plans \(withcherry.com\)](#)

¹³ [Focus: Buy now, pay later lender Affirm pushes into elective medical procedures | Reuters](#)

¹⁴ Chauncey Crail and Dia Adams, “How Does CareCredit Work” (2021) accessed at <https://www.forbes.com/advisor/credit-cards/how-does-carecredit-work/>

- We encourage the CFPB to ensure that any final rules are easily accessible and widely available to consumers, including at the point of contact with a BNPL lender. This information should also be made available in the language(s) the user is most comfortable with. Attention should be paid to the use of plain language in the messaging to ensure that those most vulnerable understand the risks of the products and the rights these protections grant.

DCWP welcomes and supports the rules proposed by the CFPB.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Vilda Vera Mayuga', written over a horizontal line.

Vilda Vera Mayuga
Commissioner, New York City Department of Consumer and Worker Protection