

# United States Senate

WASHINGTON, DC 20510

December 15, 2021

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

Dear Director Chopra:

We write to urge the Consumer Financial Protection Bureau (CFPB) to take action regarding the governance of “buy now, pay later” (BNPL) products. These interest-free, small-dollar installment loans have proven appealing to consumers, but can cause consumer harm.

BNPL is a type of unsecured deferred payment or short-term installment loan that a consumer obtains when making a purchase. BNPL credit is typically extended to a consumer at the point of sale—usually online, but sometimes in-store—to finance a specific product. In a typical BNPL extension of credit, a consumer pays a portion (often 25%) of the item’s price at the time of purchase and the remainder in equal installments. Consumers usually pay no interest and only are charged fees for late payments. So long as payments are made on time, BNPL credit is free to consumers. Rather, BNPL providers are paid directly by merchants. Fees are typically a single-digit percentage of the purchase price plus a fixed amount per transaction.

The BNPL market has experienced extraordinary growth over the past two years, catalyzed by the pandemic driving more consumers to shop online and through mobile apps, and by merchants using BNPL to increase sales from consumers wary of credit cards. This trend is likely to continue.

While the emergence of BNPL as affordable small-dollar credit has potentially provided an alternative to more costly forms of credit, these products also have the potential to cause consumer harm. Many BNPL providers structure these products in an effort to avoid certain consumer protection obligations under the Truth in Lending Act or the Military Lending Act, which generally apply to loans that are repayable in more than four installments or are subject to a finance charge. BNPL products generally do not receive all of the protections credit cards have, including those governing ability-to-repay, monthly statements, reasonable and proportional penalty fees, and the ability to raise merchant-related disputes.

In addition, nonbank BNPL providers currently operate without meaningful oversight. They are not generally subject to federal supervision that can spot unfair, deceptive, or abusive practices or other violations of federal consumer protection laws. Consumers may be unaware of these regulatory gaps and may be erroneously led to believe that credit obtained from a BNPL provider

comes with protections that are similar to those for credit cards. This regulatory gap has troubling implications.

First, consumers may not have full awareness of the risks associated with obtaining BNPL credit. In the absence of consolidated account statements, confusion about repayment schedules and consequences of default can lead to missed payments and associated late fees. Lack of standardized disclosures can also create potential for hidden fees and expenses. Marketing through retailers' websites and mobile apps compound this problem by advertising BNPL products as available at "no cost" or with "no interest." That can create a misperception that credit is truly free. Consumers are also exposed to risk of overdrafts because they typically repay BNPL credit through automatic withdrawals from bank accounts or payment via debit cards.

Second, consumers may not have an ability to repay BNPL credit. Nonbank providers typically do not engage in rigorous underwriting practices. They conduct only a "soft" inquiry on a consumer's credit for the limited purposes of verifying a consumer's identity and preventing fraud. Even multiple BNPL loans will not typically appear on a consumer's credit report. This can lead to elevated levels of indebtedness because consumers may have multiple outstanding transactions across different providers that together add up to a high overall balance. It is important for consumers to understand—before taking out a loan—that BNPL repayment obligations are debt. Clear underwriting standards and expectations could protect consumers from overextending themselves.

Third, unlike other credit products and with limited exceptions, on-time payments are not usually reported to the credit bureaus, but delinquencies or defaults may be. That can make it difficult for consumers to use BNPL to build positive credit history. Even if positive payments were reported, those payments might actually reduce a consumer's credit score by lowering the average age of their credit accounts. BNPL users tend to be younger individuals without a long credit history. Negative credit history for young consumers can have effects later in life, making it harder to qualify for favorable rates when they seek to finance a car or a home. We appreciate that the CFPB published a blog post in July to inform consumers about the structure of BNPL credit and consequences of missing a payment.

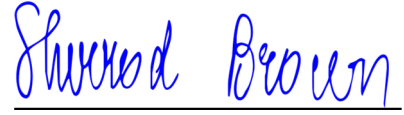
For these reasons, we respectfully request that you review BNPL products as soon as practicable and take action under the CFPB's existing authorities to protect consumers. We appreciate your attention to this critical matter, and look forward to your prompt reply.

Sincerely,



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Jack Reed  
United States Senator



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Sherrod Brown  
United States Senator



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Chris Van Hollen  
United States Senator



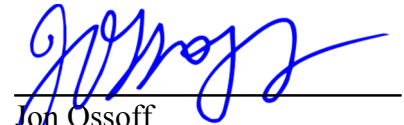
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Elizabeth Warren  
United States Senator



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Tina Smith  
United States Senator



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Jon Ossoff  
United States Senator